

## DEPARTMENT OF ENERGY

### DIVISION 90

#### BUSINESS ENERGY TAX CREDITS (BETC)

##### 330-090-0105

##### What a BETC Is

- (1) A Business Energy Tax Credit (BETC) for up to 35 percent of the eligible cost of qualifying facilities may be offset against owed Oregon income and corporation excise taxes. Qualifying renewable energy resource equipment manufacturing facilities and renewable energy resource facilities including high efficiency combined heat and power facilities, completed on or after January 1, 2007 are eligible for a tax credit equal to 50 percent of eligible costs. Qualifying homebuilder installed renewable energy facilities completed on or after January 1, 2007 are eligible for a tax credit of up to \$9,000 and qualifying high performance homes completed on or after January 1, 2007 are eligible for a tax credit of up to \$12,000. An Oregon business or non-profit entity qualifying for the tax credit may transfer the credit through the Pass-through Option in return for a cash payment.
- (2) The Oregon Department of Energy (Department) must approve the credit before it can be claimed. The credit is an incentive for Oregonians to invest in qualifying facilities. Oregon Administrative Rules Chapter 330, Division 90 applies to all Business Energy Tax Credit applications for facilities eligible for a 35 percent tax credit received by the Department on or after December 1, 2007. These rules also apply to applications for; qualifying renewable energy resource facilities, including high efficiency combined heat and power facilities; qualifying homebuilder installed renewable energy facilities and high performance homes facilities received by the Department on or after January 1, 2007. These rules apply to all applications pending as of the effective date of these rules and applications received on or after April 28, 2010.
- (3) The Department may also apply these rules to applications currently being reviewed by the Department where a final determination is pending or has been made, when the Department finds that its failure to apply the new criteria set forth in these rules may hamper the Department's efforts to reduce the costs of the BETC program.

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469.185 - 469.225

Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 3-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 2-1999, f. 12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04; DOE 3-2004, f. & cert. ef. 7-1-04; DOE 1-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 2-2006, f. 9-29-06, cert. ef. 10-1-06; DOE 3-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 3-2008, f. & cert. ef. 3-21-08; DOE 4-2008, f. 6-19-08, cert. ef. 6-20-08

### 330-090-0110

#### Definitions

For the purposes of Oregon Administrative Rules, Chapter 330, Division 90, the following definitions apply unless the context requires otherwise:

(1) **“Alternative Fuel”**: A motor vehicle fuel, other than petroleum gasoline or diesel, certified by the U.S. Environmental Protection Agency for roadway use that results in equivalent or lower exhaust emissions or higher energy efficiency when used. Alternative fuels include electricity, biofuels, hydrogen, hythane, methane, methanol, natural gas, liquefied natural gas, liquefied petroleum gas (propane), renewable diesel and other fuels the Director allows. Blends of these alternative fuels with conventional fuels will only be considered an alternative fuel under these rules when the concentration of the alternative fuel is 20 percent of the entire volume of the blended fuel or greater. Hydrated fuels must have a water content of 10 percent of the entire volume of the blended fuel or greater to be considered eligible as an alternative fuel under these rules.

(2) **“Alternative Fuel Fueling Station”**: A renewable energy resource facility necessary to refuel alternative fuel vehicle fleets. This will include the facilities for mixing, storing, compressing, charging, and dispensing alternative fuels, and any other necessary and reasonable equipment. It can be a facility for either public or private use.

(3) **“Alternative Fuel Vehicle (AFV)”** is a vehicle designed to operate on an alternative fuel and includes vehicles direct from the factory or vehicles modified to allow the use of alternative fuels. AFV does not include vehicles owned or leased by the State of Oregon acquired to comply with federal requirements for fleet acquisition of alternative fueled vehicles Or vehicles leased by an investor-owned utility (IOU) to others. For purposes of qualifying for a BETC, gasoline-hybrid AFVs purchased on or after January 1, 2010 must also be designed for electrical plug-in.

(4) **“Applicant”**: An applicant means:

- (a) A person who applies for a preliminary certification of a Business Energy Tax Credit under this section includes:
  - (A) Individuals, corporations, associations, firms, partnerships, limited liability companies and joint stock companies.
  - (B) Any cooperative, non-profit corporation, or federal, state or local governments including school districts, water districts, or any other special districts. These entities are qualified applicants when they have a qualified pass-through partner, or commit to select such a partner prior to final certification.
  - (C) A contractor installing an alternative fueled vehicle fueling station in a dwelling.
- (b) A person who applies for a final certification of a Business Energy Tax Credit under this section must be the facility owner listed on the preliminary certification.
- (c) The tax credit certificate will be issued to a facility owner or a qualified pass-through partner, but the tax credit may only be claimed pursuant to ORS 315.354.
- (d) An applicant for preliminary certification or final certification or a tax credit recipient may not include any business or non-profit corporation or cooperative that restricts membership,

sales or service on the basis of race, color, creed, religion, national origin, sexual preference or gender.

**(5) “Biofuels”:** A motor vehicle or thermal combustion fuel other than petroleum gasoline or diesel which includes ethanol or is an ethanol blend at concentrations of 11 percent of the entire volume of the blended fuel or greater or biodiesel or is a biodiesel blend at concentrations of 20 percent of the entire volume of the blended fuel or greater, including:

- (a) Biodiesel which is a fuel comprised of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, designated B100, and meeting the requirements of American Standards and Testing Measurement (ASTM) D 6751 in effect on December 1, 2007 and is registered with the US EPA as a fuel and a fuel additive under Section 211(b) of the Clean Air Act, and
- (b) Biodiesel Blends is biodiesel fuel meeting the requirements of ASTM D 6751 in effect on December 1, 2007, blended with petroleum-based diesel fuel, designated BXX, where XX represents the volume percentage of biodiesel fuel in the blend, and
- (c) Ethanol ( $\text{CH}_3\text{CH}_2\text{OH}$ ) is an alcohol fuel also known as ethyl alcohol, grain alcohol, and EtOH made from starch crops or from cellulosic biomass materials, such as grass, wood, crop residues, or used cellulose materials where component sugars are fermented into ethanol meeting the requirements of ASTM designation D 4806-01a; "Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel" in effect on December 1, 2007, and
- (d) Ethanol Blends which is ethanol fuel meeting the requirements of ASTM D 4806, "Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel" in effect on December 1, 2007, blended with petroleum-based gasoline fuel, designated EXX, where XX represents the volume percentage of ethanol fuel in the blend, and
- (e) “E85,” a motor vehicle fuel that is a blend of agriculturally derived denatured ethanol and gasoline or natural gasoline that typically contains 85 percent ethanol by volume, but at a minimum must contain 75 percent ethanol by volume. For the purposes of this chapter, the energy content of E85 is considered to be eighty-two thousand BTUs per gallon. E85 produced for use as a motor fuel shall comply with ASTM specification D 5798-99 in effect on December 1, 2007.

**(6) “Biomass”:** An organic matter such as agricultural crops and residue, wood and wood waste, animal waste, aquatic plants and organic components of municipal and industrial wastes comprised of uncontaminated carbohydrates and other cellulosic material, and organic by products from wood pulping and other biologically derived materials including organic fibers that are available on a renewable or naturally recurring basis. This definition excludes cordwood or wood used for burning in fireplaces.

**(7) “Building Automation Controls Facility”:** Energy facilities that control energy consuming equipment in a building are eligible when energy saving features exceed standard practice and applicable building code requirements. Eligible cost does not include costs associated with operations, maintenance, or repair as described in section 17(b)(D) of this rule. Facilities are eligible when energy saving features meet the following requirements and applicable code:

- (a) For existing systems within their service life, the following standards apply:
  - (A) The baseline will be based on the existing system’s capabilities in fully functional and operating condition.
  - (B) Eligible costs will be based on the incremental cost and energy savings of the proposed system as compared to a fully functioning baseline system (savings and costs associated with maintenance and repair activities are not eligible).
- (b) For systems beyond service life or new buildings, the following standards apply:
  - (A) Eligible costs and energy savings will be based on the incremental cost and energy savings between the proposed system and the baseline system.
  - (B) Only the components of the project that achieve energy savings will be considered eligible. If the component does not achieve energy savings it will not be considered an eligible cost.
  - (C) The baseline system must incorporate similar technologies to the proposed system. The minimum standard or baseline system will have the following features, plus any additional features required by code: a start/stop program, night setback program, enthalpy control program (economizer), lighting control program (sweep > 5,000 sq.ft.) and a variable flow (10 hp and above).

**(8) “Building Code”:** Applicable state and local building codes as defined in ORS 455.010 that are in effect the date the Department receives the application for preliminary certification.

**(9) “Building Envelope”:** That element of a building which encloses conditioned spaces through which thermal energy may be transmitted to or from the exterior or to or from unconditioned spaces.

**(10) “Car Sharing Facility”:** A facility in which drivers pay to become members in order to have joint access to a fleet of cars from a common parking area on an hourly basis. It does not include operations conducted by a car rental agency.

**(11) “Combined Heat and Power (Cogeneration)”:** Means a facility designed to generate electrical power and thermal energy from a single fuel source with a fuel-chargeable-to-heat rate calculation demonstrating a heat rate of 6,120 Btu/kWh or less (10 percent better than the 6,800 Btu/kWh current standard generation). This facility may be eligible for a 35 percent Business Energy Tax Credit. Facilities that do not meet this heat rate requirement may still qualify in part for a credit relating to the heat recovery portion of the project. The equation for the fuel chargeable to power heat rate calculation is  $FCP = (FI - FD) / P$ , where:

- (a) FCP = Fuel chargeable to power heat rate.
- (b) FI = Annual fuel input applicable to the co-generation process in Btu (higher heating value).
- (c) FD = Annual fuel displaced in any industrial or commercial process, heating, or cooling application by supplying useful thermal energy from a co-generation facility.

(d) P = Annual net electric output of the co-generation facility in kilowatt-hours.

**(12) “Commercial New Construction Facility”:** An energy facility which includes a new structure or one of the following:

- (a) An addition to an existing structure, which provides additional square footage;
- (b) An alteration to an existing structure, which changes the functional use of the entire structure;
- (c) An alteration to an existing structure occurring within six months of a change in the facility's ownership; or
- (d) A major renovation to 50 percent or more of the square footage of an existing structure in which three or more building systems are changed. Systems include but are not limited to: envelope, space conditioning, lighting, water heating and process.

**(13) “Commissioning”:** The process to assure that Heating Ventilating and Air Conditioning (HVAC) systems (and associated hydronic systems), lighting system controls and automatic temperature control systems have been completely and properly installed and put into service in accordance with their design intent as defined by the contract documents. The process of commissioning also includes the systematic testing, verification, documentation, training of operations personnel and preparation of operations and maintenance documentation.

**(14) “Commercial Process”:** An energy facility that is an energy-using system (e.g., lighting, HVAC, or water heating). Such a system can be studied and judged on its own.

**(15) “Commuter Parking Space”** means a facility that is a parking space that is:

- (a) Located in an area where parking spaces are regularly available for lease by the day or month to the public.
- (b) Leased by the employer for an employee’s use:
  - (A) Separate from the lease for the business premises.
  - (B) As an integral part of the lease for the business premises if the employer has the right to sublease the parking space to a commuter.
- (c) Owned by the employer.
- (d) Not located in a lot used primarily for business customers.
- (e) Not provided to an employee for parking a vehicle the employee regularly uses to perform the employee's job duties.

**(16) “Completed Application”:** Contains all of the information required in OAR 330-090-0120() and payments under OAR 330-090-0150. All questions on the application must be answered.

**(17) “Completed Facility”:** A facility for which all costs have been paid or committed by a binding contract or agreement and that is installed and operating or, in the case of a Research, Development and Demonstration facility, which the Director decides the applicant has made all reasonable efforts to operate, including making changes required by the Department.

**(18) “Cooperative Agreement Organization”:** The Department may enter into cooperative agreements with qualified public purpose, governmental, or other organizations to assist in the

development and qualification of BETC applications, with the scope of the agreement defined by the Department based on the qualifications of the organization and subject to conditions specified in the agreement.

**(19) “Cost”:** The actual capital costs and expenses needed to acquire, erect, design, build, modify, or install a facility that is eligible to receive a BETC. Costs that are incurred to bring a facility up to building code standards or otherwise repair the building in order to install the facility are considered necessary features, and may not be eligible. Costs financed with federal funds, subject to specific restrictions, terms and conditions, other than costs financed by grants excluded by ORS 315.356(1), may be eligible expenses, including but not limited to costs incurred by federal agencies directly for capital, operating, or other expenses.

(a) Cost can include payments for:

- (A) Fees to finance, design or engineer the facility, including but not limited to debt fees and equity fees;
- (B) Title searches, escrow fees, government fees, excluding fees required by OAR 330-090-0150, and shipping;
- (C) All materials and supplies needed for the erection, construction, installation or acquisition of the proposed facility; and
- (D) Work performed by employees or independent contractors of the applicant based on the following conditions:
  - (i) Employees or contractors must be certified, accredited, licensed, or otherwise qualified to do the work;
  - (ii) The work must be associated with the erection, construction, installation or acquisition of the proposed facility or in the case of a research development and demonstration facility, the work shall be directly related to the research, development, demonstration, facility design, monitoring, assessment, evaluation and reporting related to the product or technology. Project management and other similar costs may only account for up to 15 percent of the total eligible costs; and
  - (iii) Costs for employee’s or contractor’s work on the energy facility must be detailed and documented as to specific tasks, hours worked, and compensation costs.
- (E) Costs for legal counsel that is directly related to the development of a qualifying facility (non-litigation related) or directly linked to the research, development or demonstration facility (excluding patents, copyrights, etc.); and
- (F) Facilities or equipment required for vehicles to provide transportation services to serve riders (such as a wheelchair lift system) under the American with Disabilities Act.

(b) Cost may not include:

- (A) Interest and warranty charges;
- (B) Litigation or other operational-related legal fees and court costs;
- (C) Patent searches, application and filing payments;
- (D) Costs to maintain, operate, or repair a facility; ~~or~~

- (E) Administrative costs to apply for grants, loans or a tax credits or other similar funding for a facility including, but not limited to, the Business Energy Tax Credit review charge, costs associated with the creation and development of the CPA verification letter and the costs associated with securing a pass-through partner for the facility;
  - (F) Routine operational or maintenance costs associated with the facility, other than a transportation services facility, including services, supplies and labor;
  - (G) Expenses related to training, education or other related expenses;
  - (H) Expenses that are directly or indirectly offset with federal grants or fee waivers. Final certified costs will be reduced dollar for dollar by any federal grant amount received in connection with the facility.
  - (I) Other costs the Director excludes.
- (c) If a facility is built under a lease, lease-option or lease-purchase contract, the lessee's cost to acquire the facility is the value paid for the facility. If that amount is not known, the cost is the sum of:
- (A) Tax credits passed through by the lessor to the lessee;
  - (B) The amount paid when the facility is transferred; and
  - (C) The lease payments not including taxes, insurance, interest, and operating costs.
  - (D) Payments to be made in the future must be discounted to present value.
- (d) If a facility serves more than one purpose, cost includes only items needed to save energy and/or use renewable energy resources. This includes new or replacement equipment that costs more because of its energy saving features. The Department may do inspections to verify eligible costs.
- (e) Incremental cost is the cost above a reasonable minimum expected to construct a similar facility without energy efficient features.
- (A) In commercial new construction, it is the difference between building to code and building to meet or exceed the standards for substantial energy savings.
  - (B) In other facilities, it is the difference between prevailing practices for that business or industry and a more energy efficient method.
- (f) Eligible facility costs are limited by the following:
- (A) Facilities must have a one to 15-year simple payback period unless specified below. If the simple payback period exceeds those limits, eligible costs will be prorated down to the highest amount that would result in a qualifying payback; and
  - (B) Facilities must have a simple payback of more than one year and less than the service life of the facility.
  - (C) Rental dwelling weatherization facilities are limited to a 30-year simple payback.
  - (D) Solar photovoltaic (PV) facilities are limited by the maximum eligible facility cost ratio (MEC), expressed in terms of \$/watt. PV facility eligible cost shall be calculated by multiplying the appropriate rate provided below by the facility size. Once a facility has received preliminary certification the calculated cost shall be effective for 36 months for

facilities to be owned by the public and 12 months for all other facilities, from the date of certification. If the Department has not received a complete application for final certification within this time, the cost shall be recalculated based on the rate in effect at that time the final application is submitted. The minimum module performance certified by the manufacturer shall be used to calculate eligible cost. The MEC for a facility rated to produce:

(i) Up to and including 30 kW is \$7.50/watt.

(ii) More than 30 kW, but less than 200 kW, is  $-0.01 \times (\text{system size in kW}) + 7.8$ .

(iii) 200 kW or more is \$5.80/watt.

(E) Costs for a facility, or portion thereof, that has previously received a business energy tax credit.

(F) Costs to replace the same baseline facility more than once.

(i) The Department may require the baseline facility to be specifically identified and/or permanently decommissioned.

(G) For solar thermal (ST) systems,

(i) The maximum eligible cost (MEC), not including pool heating facilities, shall be calculated using the following formula:  $MEC = SOC \times \text{Number of modules} \times \text{Solar Thermal Rate}$ . Standard Oregon Conditions (SOC) is based on the OG-100 collector performance data published by the Solar Rating and Certification Corporation (SRCC) on the date the preliminary application is issued. SOC is calculated using a weighted average of the values in the "Mildly Cloudy" (1500Btu/ft<sup>2</sup>-day) test data using the following equation:

$$SOC = 0.1(\text{Category A}) + 0.2(\text{Category B}) + 0.3(\text{Category C}) + 0.4(\text{Category D}).$$

(ii) The system size is defined as the SOC multiplied by the number of collectors in the system. The following thermal rates are divided into three tiers based on the system size:

(1) For a system size of less than 100, the rate is \$220

(2) For a system size that is 100 or greater, but less than 250, the rate is \$210

(3) For a system size greater than 250, the rate is \$200.

(H) Sustainable building practices facilities, recycling market development, high performance homes, homebuilder installed renewable energy facilities and transportation facilities, excluding efficient truck technology, are exempt from simple payback requirements.

(I) For renewable energy facility installations, the following are ineligible costs: roofing, re-roofing and engineering for roofing on renewable facilities.

- (g) Costs for space conditioning or individual metering a facility(s) are limited to incremental costs, except when existing equipment is within its Service Life when costs will be the total eligible facility costs. Incremental costs are limited to 40 percent of the cost to install a replacement space or hot water heating system in rental dwellings, except as defined in (i) below.
- (h) Eligible costs for transportation facilities include, but are not limited to, telework, commuter pool vehicles, bicycles, Transportation Management Association fees, incentive programs, transit passes, car sharing, vanpool, individualized behavior change program, Research, Development and Demonstration (RD&D), purchasing or otherwise obtaining alternative fuel vehicles that are designed to transport five or more passengers, transportation services and transportation services for K-12 students. Except for RD&D facilities, bicycle purchases, and commuter pool vehicles with special equipment, the maximum eligible cost for transportation facilities is the result of the cost-per-vehicle mile calculated by a formula adopted by the Oregon Department of Energy multiplied by the estimated vehicle miles reduced (VMR) by the facility.
- (i) Costs for premium efficient appliances as defined in this rule are limited to incremental costs. The Department may determine the incremental cost as a portion of the facility cost based on similar facilities up to forty percent of the purchase cost.
- (j) In implementing the utility pass-through in OAR 330-090-0140(2), utilities may set a minimum eligible cost to participate. The following requirements apply:
  - (A) The utility must submit exact specifications of the limit to and receive approval by the Department prior to implementation of the limit.
  - (B) The utility must provide notification to the customer that there is no minimum when applying directly to the Department, however, payments required by OAR 330-090-0150(3) do apply.
- (k) Sustainable building practices facilities are exempt from the previous requirements of this definition, as the eligible cost for these facilities is calculated using data established in **Table 1**.

[ED. NOTE: Table reference is available from the agency.]

- (l) The sum of any rebates or cash payments under ORS 469.631 to 469.645, 469.649 to 469.659, 469.673 to 469.683, or 757.612(5)(a), or from a public purpose organization or federal grants or credits and the business energy tax credit may not exceed eligible project costs.

**(20) “Cost-per-Vehicle Mile”:** The total cost of one vehicle mile driven by a single occupant. The components of calculating the total cost include, but are not limited to, vehicle operation cost, fuel cost, travel time, congestion and pollution. The calculation formula for the total costs is available on the Department’s website.

**(21) “Dwelling Unit”:** means the space within a building, manufactured dwelling, recreational vehicle or floating home that is a rental dwelling. If a person rents only a space for a manufactured dwelling or recreational vehicle or moorage space for a floating home as defined in ORS 830.700.

- (22) **“Director”**: The Director of the Oregon Department of Energy or designees.
- (23) **“Energy Department”**: The Department of Energy.
- (24) **“Energy Facility”**: is defined in ORS 469.185 (5).
- (25) **“Facility”**: is defined in ORS 469.185 (6) and also includes a Research, Development & Demonstration (RD&D) facility that complies with these rules. A facility must be located within the geographical confines of Oregon. The dollar value of the first year energy savings must be less than the cost of such facility, except as allowed for a Research Development & Demonstration facility, transportation or recycling market development or recycling facility.
- (a) An energy conservation measure (ECM), is a facility if it results in substantial savings in the amount of purchased energy used at a site by a business or other eligible entity. Energy conservation measures include equipment installed for the purpose of reducing energy use.
- (b) Costs for a facility needed to obtain substantial energy savings for a new commercial, institutional, or industrial building. Savings will be compared to energy used by a building, unit, or industrial process that does not have the proposed conservation. But, such buildings must comply with the Building Code and have the same use, size, space heat fuel, and orientation as the applicant's building, unit, or industrial process.
- (c) A space conditioning system(s) is a facility if it provides substantial energy savings and complies with the following Business Energy Tax Credit program requirements:
- (A) A report demonstrating any mercury-switch thermostats that is replaced or have been recycled and, if so, how.
- (B) Space conditioning systems installed in an existing dwelling unit must not involve changing the fuel source. An incremental upgrade, as defined in OAR 330-090-0110(18)(e), of a fuel switching facility will be allowed if the upgrade complies with these rules.
- (C) Additionally, space conditioning equipment shall meet one of the following requirements:
- (i) Two-stage gas or propane furnace, minimum AFUE 0.92,
- (ii) Gas or propane boiler, minimum AFUE 0.88
- (iii) Central AC SEER  $\geq$  14 (if installed)
- (iv) Ducted heat pump  $\geq$  HSPF 8.5, air source, and ground source COP  $\geq$  3.0
- (v) Ductless mini-split heat pump with inverter drive, no incorporated electric backup heat, sized and installed as per ENERGY STAR® Homes Northwest specifications in affect at the time the preliminary application is issued.
- (d) For buildings to be owned, leased, or otherwise operated and maintained by the state, including the State System of Higher Education, to qualify for the credit it must comply with the requirements of the State Energy-Efficient Design Program (SEED) as defined in OAR Chapter 330, Division 130 and associated guidelines, in addition to meeting requirements of these rules.

- (e) For a solar photovoltaic facility to be eligible to receive a Business Energy Tax Credit, all qualifying installations must meet the following minimum facility specifications:
  - (A) Facility must be permitted and in compliance with all applicable building and electrical codes.
  - (B) All facility equipment must be rated for the temperature and exposure conditions in which it will operate.
  - (C) All facility components must be new (modules, inverter, batteries, mounting hardware).
  - (D) Array mounting must not reduce the expected life or durability of the structure on which it is located.
  - (E) The facility must include all building code required signage and a customer manual.
  - (F) A customer manual must contain the following information:
    - (i) Facility documentation, including:
      - (1) As-built drawings that accurately describe the components installed and the wiring design, including wire sizes, and estimated length of wire runs.
      - (2) Facility site plan that indicates array and inverter location.
      - (3) Sunchart used to determine facility total solar resource fraction.
      - (4) Operation and maintenance requirements including the name and phone number of person(s) or company to call in the case of a facility failure.
    - (ii) Warranties and installation documentation
      - (1) Minimum two-year contractor warranty for materials and workmanship
      - (2) Manufacturer's warranty for PV modules and inverter
      - (3) Permit documentation
    - (iii) Manuals and data sheets
      - (1) Bill of material listing all primary facility components including part numbers
      - (2) Inverter owner's manual
      - (3) Manufacturer data sheets for major components, including but not limited to: inverters, modules, racking/mounting facility, charge controller and batteries.
  - (G) All facilities must include one or more meters that are capable of recording the facility's total energy production. Meters must be equivalent to American National Standards

Institute (ANSI) certified revenue meters with a 0.5 or better accuracy class and, if digital, it must have non-volatile data memory.

- (H) Array must be sized to operate within the current, voltage and power limits approved and warranted by the inverter manufacturer. The temperature-adjusted voltage must remain within the inverter limits at the historical record low temperature for the location in which it is installed.
  - (I) Wires must be sized to keep the total voltage drop below 2 percent on the DC conductors from the array to the inverter including the existing wire whips on the PV modules, and/or 2 percent on the AC conductors from the inverter to the point of interconnection (total not to exceed 4 percent).
  - (J) The installing contractor must provide a minimum 24-month full warranty on parts and labor to the facility owner.
  - (K) Facilities participating in the pilot Feed-In Tariff program under ORS 757.365 are not eligible to receive a Business Energy Tax Credit.
- (f) For a solar thermal facility to be eligible to receive a Business Energy Tax Credit, all qualifying installations must meet the following minimum facility specifications:
- (A) The facility must be permitted and in compliance with all applicable building, electrical, and plumbing codes.
  - (B) All equipment must be rated for the temperature and exposure conditions in which it will operate.
  - (C) All primary facility components must be new (collectors, tanks, controls, pumps).
  - (D) Array mounting must not reduce the expected life or durability of the structure on which it is located.
  - (E) The facility must include a customer manual containing the following information:
    - (i) Facility documentation, including:
      - (1) As-built drawings that accurately describe the components installed, including a valve chart.
      - (2) Facility site plan that indicates the location of collectors and storage tank.
      - (3) Sunchart used to determine facility total solar resource fraction.
      - (4) Operation and maintenance requirements including the name and phone number of person(s) or company to call in the case of a facility failure.
      - (5) Permit documentation.

(ii) Warranties and installation documentation, including:

- (1) A minimum two-year contractor warranty for materials and workmanship
- (2) Manufacturer's warranty for collector, tanks, pumps and heat exchanger (if present) and any other components under warranty by the manufacturer.
- (3) Permit documentation.

(iii) Manuals and data sheets, including:

- (1) Bill of material listing all primary facility components, including part numbers
- (2) Facility controller owner's manual
- (3) Manufacturer data sheets for major components, including, but not limited to: collectors, tank, controllers, pumps, Btu meter, expansion tank, etc.

(F) Facility is sized appropriately for the load. The solar savings fraction is not to exceed 0.70 for domestic water heating systems without a means of rejecting heat once the load is met.

(G) Thermal storage is adequate to accommodate daily use pattern. For typical domestic load profiles, this is defined as a minimum of 1.25 gallons per square foot of collector area. For facilities with loads that are coincident with solar generate this storage amount may be reduced if documentation is provided.

(H) All solar storage tanks must be insulated with not less than R15 insulation.

(I) The following standards are for pipe insulation:

- (i) Collector loop insulation must be rated for conditions in which it operates. Pipe insulation shall have a maximum K value of 0.25 Btu in/hr. sq. ft. F° and a minimum thickness of 0.75 inches.
- (ii) Potable water pipe located outdoors must be insulated to a minimum R-value of 12. Pipe insulation must be protected with a U-V rated tape or pipe jacket. U-V paint is not sufficiently durable.

(J) Anti-convective pipe loop or trap is required on the inlet and outlet of the storage tank. These loops or traps shall have a minimum 8-inch vertical drop to constitute an effective convective heat barrier. Heat trap nipples alone are not reliable in stopping heat migration, and will not meet this requirement.

(K) Install thermometers on collector supply and return pipes. One movable thermometer for two wells is sufficient.

(L) Install a BTU meter capable of measuring total delivered energy on all facilities with standard Oregon conditions rating greater than 250 kBtu/day. A Btu meter must have a

designated flow meter and temperature sensors and be located on the load side of the system.

(M) Install a properly sized thermostatic mixing valve on the output of the domestic hot water system to ensure that delivered temperature does not exceed 140°F. A Btu meter must have a designated flow meter and temperature sensors and be located on the load side of the system.

(N) Solar thermal facilities must be installed in compliance with the Oregon Mechanical Specialty Code (Chapter 14 OSMC), the Oregon Residential Specialty Code (Chapter 23), the Oregon Plumbing Specialty Code and all other local regulations with jurisdiction.

(O) Facilities must be designed and installed for complete automatic operation including protection from freeze damage and overheating of collectors.

(P) Pressurized storage tanks must not be allowed to be heated above 180°F.

(g) A facility does not include:

(A) A residential structure or dwelling that is being used for a residence, except for residential structures that are used exclusively as rental properties or that qualify as a licensed homebuilder installed renewable energy facility or high performance home facility.

(B) Swimming pools and hot tubs used to store heat.

(C) Wood stoves.

(D) Space conditioning systems and back-up heating systems, including systems that do not meet code or minimum standards listed in the Business Energy Tax Credit rules.

(E) Devices and substances whose use is common in the applicant's business, except hog fuel boilers that replace fossil fuel boilers.

(F) Pollution control facilities and alternate energy devices for which a tax credit or ad valorem tax relief is granted under ORS 307.405, 316.097 or 316.116.

(G) Devices or materials which are standard practice.

(H) Recycling automotive air conditioning chlorofluorocarbons (CFC).

(I) Conservation in rental dwellings, for applicants listed in ORS 469.205(1)(c)(A) and (B), which were issued an occupancy permit on or after January 1, 1996.

(J) Other items the Director finds are not allowed under ORS 469.185 to 469.225.

**(26) “Facility Eligible Square Footage”:** For the purpose of calculating the tax credit amount for a Sustainable Building Practices Facility, facility eligible square footage includes all temperature-conditioned floor areas, and one level of parking structures or parking structure

elements of the facility. It does not include exterior square footage beneath overhangs, awnings, canopies; walkways or unconditioned plaza areas beneath conditioned portions of the building.

**(27) “Facility Operator”:** The person or people to whom the applicant gives authority to manage a facility. Such person or people will be the applicant’s agent for all reasons related to the facility once its development begins.

**(28) “Facility Owner”:** An applicant who purchases and owns a qualified facility.

**(29) “Facility Start” prior to erection, construction, installation or acquisition”:** The earliest date on or after the date of the application that meets one of the following criteria:

- (a) A non-refundable deposit will be placed on the facility equipment;
- (b) A purchase order will be placed for the equipment;
- (c) A contract for the design of the facility will be executed;
- (d) A document ~~is executed~~ that obligates the applicant to proceed with a facility will be executed; or
- (e) Any other type of financial commitment towards the erection, construction, installation or acquisition of the facility.
- (f) For a Sustainable Building Practices Facility, the eligible cost date is within 30 days of receiving the LEED registration number, before 50% of Design Document for the facility are complete, or prior to receiving building permits for the facility.

**(30) “Final Certification”:** Final certificate issued after completion of an approved BETC facility.

**(31) “Geothermal Energy”:** Natural heat in any form below the earth's surface. It also means minerals in solution, or other products of naturally heated substances below the earth's surface. It includes:

- (a) Products of geothermal processes, such as steam, hot water, and hot brines; or
- (b) Steam and gases, hot water and brine caused by injecting substances into the earth; or
- (c) Heat or other related energy in the earth; or
- (d) By-products of (a) through (c).

**(32) “Ground Source Heat Pump”:** means a heating, ventilating and air-conditioning system, also known as a ground water heat pump, earth-coupled heat pump, geothermal heat pump or ground loop alternative energy device that utilizes a subsurface closed loop heat exchanger to extract or reject heat to the earth. A ground source heat pump is eligible for a 35 percent Business Energy Tax Credit.

**(33) “High Efficiency Combined Heat and Power” (Cogeneration):** means a renewable energy resource facility designed to generate electrical power and thermal energy from a single fuel source with a fuel-chargeable-to-heat rate yielding annual average energy savings of 20 percent is eligible for a 50 percent Business Energy Tax Credit. If this energy savings is not achievable, the facility may be eligible for a 35 percent tax credit under OAR 330-090-0110(32). The fuel chargeable-to-heat rate calculations shall demonstrate a heat rate of 5,440 Btu/kWh or

less (20 percent better than the 6,800 Btu/kWh current standard generation). Facilities that do not meet this requirement may still qualify for a 35 percent tax credit (see Combined Heat and Power) or in part for a tax credit relating to the heat recovery portion of the project. The equation for the fuel chargeable to power heat rate calculation is  $FCP = (FI - FD) / P$ , where:

- (a) FCP = Fuel chargeable to power heat rate.
- (b) FI = Annual fuel input applicable to the co-generation process in Btu (higher heating value).
- (c) FD = Annual fuel displaced in any industrial or commercial process, heating, or cooling application by supplying useful thermal energy from a co-generation facility
- (d) P = Annual net electric output of the co-generation facility in kilowatt-hours.

**(34) “High Performance Home”:** Meets the criteria in ORS 469.185(8) and 469.197 and is a home that is a dwelling unit constructed by a licensed builder under the Oregon Residential Specialty Code with its own space conditioning and water heating facilities and intended for sale to an end-use homebuyer. The facility must meet the following requirements:

- (a) Shall be certified through the ENERGY STAR® Homes Northwest program.
- (b) Designed and constructed to reduce net purchased energy through use of both energy efficiency and on-site renewable energy resources;
- (c) Meet the criteria established for a high-performance home under ORS 469.197
- (d) The building shell shall be constructed to at least the minimum values specified in the following prescriptive path:
  - (A) Ceilings:  $U \leq 0.030$
  - (B) Walls: above grade  $U \leq 0.050$
  - (C) Walls: below grade  $U \leq 0.060$
  - (D) Floors: above grade  $U \leq 0.025$
  - (E) Floors: on grade, [slab edge] perimeter R-15 min. 2 feet vertical or combined vertical/horizontal – heated slab also requires R-10 foam board under slab.
  - (F) Windows and glass doors:  $U \leq 0.32$  (weighted average). Exception: solar glazing that is part of a passive solar design may have a higher U-factor. Glass doors are doors that contain 50 percent or more glazing.
  - (G) Glazing area: glazing to floor area ratio  $\leq 16$  percent (including windows, skylights, and glass doors considered as glazing in the code) for homes larger than 1,500 square feet of conditioned space floor area and  $< 18$  percent for homes 1,500 square feet of conditioned space floor area and smaller.
  - (H) Shell tightness: 5.0 ACH50 Pa confirmed by blower door test

- (d) HVAC system and air ducts shall be incorporated into conditioned space, or eliminate forced-air ductwork.
  - (e) Space conditioning equipment shall meet the eligibility requirements listed in (21)(c)(C).
  - (f) A Renewable Energy Facility shall provide on-site energy savings or generation of not less than 1kWh/yr per square foot of conditioned floor space.
  - (g) Water heating systems shall meet ENERGY STAR® Homes Northwest specifications including secondary water heating equipment that backs up solar domestic water heating facilities.
  - (h) Includes at least one of the following measures:
    - (A) Obtain certification through a Green Building program recognized by the Department.
    - (B) Meet ENERGY STAR Homes Northwest Builder Option Package #2 ventilation specifications through the use of a heat or energy recovery ventilator, except that the sensible recovery efficiency shall be > 50 percent at 32°F and the EUI shall be <1.5 Watts/cfm.
    - (C) Use a gas or propane water heater with a minimum EF of 0.80 for primary water heating. The water heater may not also be used for space heating or as the backup to a solar water heating facility to be considered a qualifying measure under this section.
  - (I) A High performance home may meet a package of alternate shell or HVAC measures that are equivalent to these requirements. Shell measures may be increased to offset HVAC efficiency, however HVAC measures may not be used to reduce minimum shell requirements.
    - (a) Shell measures shall be a combination of assemblies that together have a total U x A no higher than a base case home described in section (C)(c), above. Trade-offs will be evaluated according to the thermal trade-off procedure in Oregon Residential Specialty Code Chapter 11, Energy Efficiency, Table N1104.1(1).
    - (b) Mechanical facilities will be evaluated for comparable annual energy use.
- (35) “Homebuilder Installed Renewable Energy Facility”** is defined in ORS 469.185(9). The amount of the tax credit for homebuilder-installed renewable energy facilities shall be capped at \$9,000 per high performance home. For purposes of this section, renewable energy resource facilities may include: photovoltaic, solar domestic water heating, active solar space heating, passive solar, and ground source heat pumps. The following requirements must be met:
- (a) Photovoltaic: The credit amount is based on \$3 per watt of installed capacity as determined by the Department. Eligible installations have a Total Solar Resource Fraction of at least 75 percent using the Total Solar Resource Fraction (TSRF) method as described in the Business Energy Tax Credit (BETC) application. Installations must be verified by a Tax Credit Certified Solar PV Technician. This verification must cover performance, longevity, and

proper documentation of the facility design, operation and maintenance. Installers must provide a warranty covering all parts and labor for two years.

- (b) Solar domestic water heating: The credit amount is equal to \$0.60 per kWh saved annually. The savings are based on values published by the Solar Rating and Certification Corporation (SRCC) plus 100 kWh, which are added to represent Oregon water heating loads. Solar thermal domestic water heating installations must have a Total Solar Resource Fraction (TSRF) of at least 75 percent and be designed to provide no less than 25 percent but not more than 70 percent of the annual domestic water heating load. Installations must be OG-300 certified. Installations must be verified by a solar thermal Tax Credit Certified Technician. This verification must cover performance, longevity, and proper documentation of the facility design, operation and maintenance. Installers must provide a warranty covering all parts and labor of the facility for two years.
- (c) Active solar space heating: The credit amount is equal to \$0.60 per kWh saved based on a calculation procedure approved by Department staff. Active solar space heating installations must demonstrate a whole building annual energy savings of at least 15 percent to be eligible. Installations that combine space heating and domestic water heating are allowed providing that the solar storage tank is not heated by a backup heat source (e.g. gas or electric water heater). Installations must be verified by a solar thermal Tax Credit Certified Technician. This verification must cover performance, longevity, and proper documentation of the facility design, operation and maintenance. Installers must provide a warranty covering all parts and labor of the facility for two years.
- (d) Passive solar: The credit amount is equal to \$600 per home plus \$0.60 per square foot of heated floor space. Passive solar design strategies must demonstrate a whole building annual energy savings of at least 20 percent to be eligible. This can be achieved by either meeting the prescriptive requirements for a passive solar home under the residential energy tax credit or demonstrated with whole building energy modeling and certified by a professional engineer.
- (e) Ground source heat pumps: Ground source heat pumps must have a coefficient of performance (COP) of 3.5 or greater. The savings is based on the incremental savings over the energy savings provided by the ground source heat pump with a COP of 3.0. The credit amount is equal to \$0.60 per kWh saved.
- (f) Other: Other renewable energy resource facilities (e.g. wind turbines, fuel cells) will be evaluated on a case-by-case basis and the credit amount will be equal to \$0.60 per kWh saved. Facilities must be connected to home's main service panel and installers must provide a warranty covering all parts and labor of the facility for two years.

**(36) "HVAC Equipment":** Heating, Ventilation, and Air Conditioning (HVAC) systems are eligible for a 35 percent Business Energy Tax Credit.

- (a) Eligible combustion equipment (furnaces, boilers, water heaters, and burners) must have a minimum combustion efficiency of 86 percent Annual Fuel Use Efficiency (AFUE) rating. An exception may be granted if the system efficiency is proven to be higher due to

application of a different distribution system (e.g.: radiant systems in high infiltration spaces), control strategies (e.g.: pony boilers), or reduced stand-by losses (e.g.: low-mass boilers).

(b) Heat pumps must have an energy input that is entirely electric and be rated with a Heating Season Performance Factor (HSPF) or Coefficient of Performance (COP) as follows or higher:

(A) Air source heat pumps: 8.5 HSPF

(B) Water source heat pumps: 4.2 COP or ten percent greater than COP listed in Table 13-M of Oregon code

(C) Air Conditioning: 10 % greater than COP listed in Table 13-L of Oregon code

**(37) “Hybrid Electric Vehicle”:** An energy facility that is a vehicle which draws propulsion energy from onboard sources of stored energy which include both an internal combustion engine and a rechargeable energy storage system. The charging system for the energy storage system must have an operating voltage of 100 Volts or higher. In addition to a hybrid drive train, a Hybrid Electric Vehicle (HEV) must also have a regenerative braking system. A vehicle purchased after January 1, 2010 is not eligible to receive a Business Energy Tax Credit.

**(38) “Individualized Travel Behavior Change Program”:** A facility that is a program approved by the Oregon Department of Energy that reduces vehicle miles traveled through one-on-one contact with participants in a specific geographical area or in a targeted group.

**(39) “Industrial Process Energy Facility”:** An energy facility that provides a direct improvement to a manufacturing process in a facility conducting activities categorized in two-digit 1987 Standard Industrial Classification (SIC) codes 01 through 49 or the corollary 2002 North American Industry Classification System (NAICS) codes including 11 through 31 and 48-49 regardless of ownership, and:

(a) An energy facility that provides substantial energy savings from conservation, or;

(b) A renewable energy resource facility that provides substantial energy savings through the use of renewable resources; or

(c) A renewable energy resource facility that provides substantial energy savings by recovering waste heat from cogeneration systems; or

(d) A renewable energy resource facility that prepares or conditions alternative fuels for distribution or dispensing; or

(e) An energy facility that increases industrial process efficiency through recycling market development; or

(f) An energy facility that provides emergency replacement inventory of electric motors as defined in OAR 330-090-0110(23)(d) ; but

(g) Does not include space conditioning for human comfort or general illumination.

**(40) “Lease Contract”:** A contract between a lessor and a lessee of a facility.

(a) In a lease-purchase contract the lessee owns the facility at the end of the lease and is eligible for the BETC.

(b) In a lease or lease-option contract the lessor owns the facility through the life of the contract and is eligible for the BETC.

**(41) Lighting Facility**: An energy facility that will reduce the affected lighting energy use by at least 25 percent or by at least 10 percent for a new facility . For non-residential structures, an eligible facility must also report whether there will be any lamps in the facility that will be subsequently replaced and if those lamps will be recycled,, how.

**(42) “Low Interest Loan”**:

(a) For an electric utility, a loan with interest that is not more than 6.5 percent per year for those measures identified as cost effective in the utility audit. All other measures identified in the utility audit will be financed by a rate established by the OPUC. The combined interest rate will not exceed 12 percent.

(b) For all utilities, the loan principal or interest rate will be reduced by the present value of the tax credit earned under these rules. If the principal or interest is reduced to zero by applying the present value of the credit without allotting all that value, the excess will accrue to the owner who receives the loan. The loan will be repaid in a reasonable time not more than 10 years after it is issued.

(c) Some utilities may offer cash payment incentives as an option to a loan. The present value of the tax credit may be added to this incentive as provided in OAR 330-090-0140(2) of this rule.

**(43) “Mass Transit District”**: A mass transit district included in ORS 184.675(7).

**(44) “Metropolitan Service District”**: A metropolitan service district included in ORS 184.675(7).

**(45) “Necessary Feature”**: A necessary feature does not qualify as an eligible cost and is a feature for which the primary purpose is:

(a) Complying with the Building Code, including remodeling or new construction that includes facilities to comply with the Building Code;

(b) Complying with specific state or federal statues or requirements for pollution control or recycling facility equipment. Recycling facilities are necessary features except as noted in OAR 330-090-0110(53); or

(c) Routine maintenance or repair, such as replacing water damaged insulation, a broken window, dry-rotted wood siding or trim.

**(46) “Net Present Value”**: A cash payment equivalent to the net present value of the BETC as determined under OAR 330-090-0140(1)(b). This is also referred to as the “pass-through rate.”

**(47) “Organization”**: A corporation, association, firm, partnership, limited liability company, joint stock company, cooperative, non-profit corporation, or federal, state or local government including school district, water district, or any other special district.

**(48) “Pass-through Option”**: An option that allows a facility owner to transfer the facility’s tax credit eligibility to certain persons or businesses in return for a cash payment equivalent to the net present value. A tax credit may be transferred one time only, from the facility owner to an eligible pass-through partner or partners.

**(49) “Pass-through Partner”:** A personal income tax payer, individual, C corporation or S corporation that purchases a tax credit certificate in return for a cash payment equivalent to the net present value of the BETC.

**(50) “Preliminary Certification”:** Preliminary certificate issued upon successful completion of the first stage in obtaining a BETC.

**(51) “Premium Efficient Appliance”:** An energy facility that is an appliance that has been certified by the Department to have premium energy efficiency characteristics. Residential appliances are listed in the Department’s Alternative Energy Devices Systems Directory. Commercial appliances are listed in the Department’s Premium Efficient Commercial Appliances Directory.

**(52) “Public Purpose Organization”:** The entity administering the conservation and renewable public purpose funds described in ORS 757.612(3)(b)(A) and (B) or its agents.

**(53) “Qualified Transit Pass Contract”:** is defined in ORS 469.185(10).

**(54) “Recycling”:** A process to change a waste stream into a useable product or material. It does not include re-use in the same way the product or material first was used unless it changes the product or material. It does not include the combustion or incineration of a waste stream or components thereof, although these processes may be a part of an “Energy Facility” or “Waste to Energy Facility” where they include characteristics required to meet those definitions.

**(55) “Recycling Facility”:** is defined in ORS 469.815(11)

**(56) “Recycling Market Development Facility”:** Facilities that stimulate demand for recycled materials. It includes facilities that meet one of the following criteria:

- (a) The facility uses recycled materials as feedstock to produce new products; or
- (b) Equipment that allows reuse of pre or post consumer waste in the production of new products; or
- (c) Recycled material equipment which yields a feedstock with new and changed characteristics for the production of new products; or
- (d) Equipment that enables a higher amount of recycled material feedstock to be used in the manufacture of a product.

**(57) “Renewable Diesel”:** A diesel fuel derived from biomass as defined in United States Energy Policy Act 2005 Section 45K (C)(3), using the process of thermal depolymerization that meets the following:

- (a) Registration requirements for fuels and chemicals established by the EPA under Section 211 of the Clean Air Act (42 U.S.C. 7454) in effect on December 1, 2007, and
- (b) Requirements of the ASTM D975 or D396 in effect on December 1, 2007, and
- (c) Has a producer’s Certificate of Analysis which certifies that the lot, batch or produced volume for sale has an organic content concentration of greater than 50 percent of the entire volume of the resultant fuel and the organic feedstock material is described.

**(58) “Renewable Energy Resource”:** is defined in ORS 469.185(12).

**(59) “Renewable Energy Resource Facility”:** means an energy facility used in the processing utilization, or storage of renewable energy resources to:

- (a) Replace a substantial part or all of an existing use of electricity, petroleum or natural gas;
- (b) Provide the initial use of energy where electricity, petroleum or natural gas would have been used;
- (c) Generate electricity to replace an existing source of electricity or to provide a new source of electricity for sale by or use in the trade or business;
- (d) Perform a process that obtains energy resources from material that would otherwise be solid waste as defined in ORS 459.005; or
- (e) Manufacture or distribute alternative fuels, including but not limited to electricity, ethanol, methanol, gasohol or biodiesel.

**(60) “Renewable Energy Resource Equipment Manufacturing Facility”:** means a facility as defined in ORS 469.185 (13) and subject to standards adopted by the Oregon Department of Energy in these rules.

**(61) “Rental Dwelling”:** means any property that contains a dwelling unit or rooming unit with living facilities. Living facilities include facilities for sleeping, eating, cooking and sanitation, for one or more persons, other than the property owner, which is subject to a rental agreement that provides for meaningful compensation to the owner and which compensation subject to Oregon income or excise tax.

**(62) “Rental Weatherization”:** means energy conservation and efficiency measures that improve the energy efficiency of a rental dwelling. In order to qualify for a Business Energy Tax Credit, an applicant must meet requirements (a) through (c):

- (a) An applicant must be planning to perform a minimum of two weatherization measures on the rental dwelling if one of the measures is to replace windows on the rental dwelling.
- (b) Prior to being eligible to receive a Business Energy Tax Credit for installing a renewable facility on a rental dwelling, all standard weatherization measures, including roof insulation to a minimum of R-38, floor to minimum of R-21 and walls to a minimum of R-13 (where achievable on outside walls where no insulation is present) must be completed.
- (c) For purposes of meeting the requirements of ORS 469.207, when a utility audit is not available, a vendor-provided audit demonstrating substantial savings and approved by the Department will suffice. A self-audit based upon the following list may be substituted when accompanied by U-values, areas, and other appropriate general information regarding the measures, including:
  - (A) Caulking, weather-stripping and other prescriptive actions to seal the heated space and ducts in a dwelling;
  - (B) Insulation of ceilings or attics to R-38 if achievable in areas with R-19 or less, including insulation installed on flat roofs and associated ventilation;

- (C) Insulation of outside walls to a nominal R-13 if achievable in areas where no insulation is present, of unfinished walls adjacent to unheated areas to R-21 if achievable in areas where no insulation is present, and of finished walls adjacent to unheated areas to R-11 if achievable in areas where no insulation is present;
  - (D) Insulation of floors over unheated spaces to at least R-25 if achievable in areas where no insulation is present, and materials to support the insulation and needed ground cover and ventilation;
  - (E) Insulation and sealing of supply and return air ducts in unheated spaces to at least R-8 if achievable and no insulation is present and the ducts are in unheated areas;
  - (F) Insulation of water heaters, water pipes, or steam pipes in unheated spaces and for at least 10 feet from the water heater in unheated areas to at least R-3 if achievable and no insulation is present;
  - (G) Double-glazed windows (including sliding doors) with a U-value of 0.30 or lower, when replacing single-glazed windows.
  - (H) Insulated exterior doors with a U-value of 0.20 or lower (R-5 or higher).
  - (I) Programmable thermostats;
  - (J) Blower door tests and blower door assisted whole house air sealing or duct sealing performed by a contractor certified by the Department's Residential Energy Tax Credit technician certification program;
- (d) If an applicant undertakes envelope measures, the following requirements apply:
- (A) Replacement windows must have a U-value of 0.30 or less for residences.
  - (B) U-values must be 10% better (lower) than code requirements for commercial.
  - (C) Insulation that exceeds code requirements or when not required by code is an eligible measure if substantial savings and economic criteria required in the OARs are met.
- (63) "Research, Development, and Demonstration Facility (RD&D)":** A facility that complies with (a) through (e):
- (a) A facility that is not standard practice and that is likely to produce or produces products or technologies that are likely to qualify as a facility in Oregon when commercialized. Business Energy Tax Credit RD&D applicants' total lifetime project costs will be determined for a defined period established at the time of the initial application and will be capped at \$20,000,000 for renewable energy RD&D and high efficiency CHP RD&D and \$10,000,000 for all other RD&D project types. Additionally, eligible RD&D facilities must comply with one or more of the following criteria:
    - (A) Research facilities that include a test bench research, prototype or pilot scale construction of a theoretically proved or primary researched technology;

- (B) Development facilities that include the new manufacture or initiation of the capability to produce or deliver facilities in Oregon, excluding development facilities that increase established manufacturing or production capacity in Oregon;
  - (C) Demonstration facilities that are likely to resolve questions on how to apply new technology or that inform the public about new or improved technology through pilot or production scale applications of technology;
  - (D) Innovative travel reduction facilities that reduce vehicle miles traveled. The applicant must conduct pre and post surveys that measure travel reductions and submit the results with the application for final certification. A transportation district, mass transit district, or metropolitan service district within a community of 50,000 or more people may not qualify for more than \$2 million annually in eligible costs for innovative travel reduction programs.
  - (E) Facilities that improve energy efficiency in a focused geographic area through the replacement of outmoded energy equipment with energy-efficient equipment.
  - (F) Facilities in the Director's determination are likely to achieve Oregon Department of Energy goals.
- (b) A facility that demonstrates a reasonable potential to result in energy or conservation benefits in Oregon for which the value is likely to exceed the value of the tax credit, based on information filed with the application for preliminary certification.
  - (c) A qualifying RD&D facility that exclusively supports renewable energy resource use will be eligible for a 50 percent Business Energy Tax Credit; all other qualifying RD&D facilities will be eligible for a 35 percent tax credit.
  - (d) Eligible costs for a Research, Development or Demonstration facility may include:
    - (A) Engineering, design and administrative costs
    - (B) Costs inherent in a research, development and demonstration facility that may not result directly in saved or produced energy. Such costs may include:
      - (i) Facility design, monitoring, assessment, evaluation and reporting. This includes but is not limited to: the development of standards, specifications, policies and procedures facilitating technology transfer; instruments, and controls.
      - (ii) Other equipment needed to monitor, assess or evaluate the facility and the impacts of the facility.
    - (C) The following costs related to demonstration model(s) may be considered eligible:
      - (i) Materials for the demonstration model(s).
      - (ii) The manufacturing, construction, assembly, and/or installation of the demonstration model(s).
      - (iii) Testing and monitoring the demonstration model(s).

(D) Eligible costs for a Research, Development or Demonstration facility are not subject to OAR 330-090-0110 (18)(f).

(E) Other eligible costs defined by Oregon Administrative Rule.

(e) Ineligible costs for a Research, Development or Demonstration facility may include:

(A) The lease or purchase of land or building(s) unless the applicant can clearly demonstrate to the Director that the cost is necessary and exclusive to the facility.

(B) Other ineligible costs defined by Oregon Administrative Rule.

(f) A Research, Development or Demonstration facility is not eligible to receive a Business Energy Tax Credit when the facility's activities are a refinement of an existing technology and do not represent a strategic, new or potentially large benefit to Oregon.

**(64) “Residential Dwelling”:** means a structure or the part of a structure that is used as a home, residence or sleeping place by one or more persons who maintain a household or by two or more persons who maintain a common household. A Business Energy Tax Credit may not be claimed for a renewable energy facility located in, adjacent to, or on a one or two family home unless the home is used exclusively as a rental dwelling where the rental agreement provides for meaningful compensation to the owner and which compensation is subject to Oregon income or excise tax.

**(65) “Residential Energy Tax Credit Qualifying Equipment”:** means equipment that qualifies for the Residential Energy Tax Credit (RETC) from the Department. The equipment is eligible for the Business Energy Tax Credit (BETC) in either of the two following methods:

(a) A facility that consists solely of equipment that is on the qualifying equipment list at the time of the application submittal may apply as outlined in the Oregon Administrative Rules 330-90-105-150 using operating schedules, capacity, efficiency and cost information to prove qualification; or

(b) The facility, made up of qualifying equipment may also choose to effectively take the RETC through the BETC Program by using the following formula. Residential tax credit amount (from qualifying appliance list)  $\div$  0.35 = BETC eligible cost.

**(66) “Riders”:** Employees, students, clients, customers, or other individuals using transportation facilities or transportation facilities for travel.

**(67) “Service Life”:** Equipment service life is as established in the most recent edition of the American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE) Heating, Ventilating and Air Conditioning (HVAC) Applications Handbook as of the date the application for preliminary certification is received by the Department or as determined by the Director for equipment not rated by ASHRAE. The Department may prorate the eligible project

cost based on the remaining service life of the equipment. If the baseline facility has exceeded its service life, only an incremental facility will be considered eligible for a tax credit.

**(68) “Simple Payback”:** The total eligible cost of a facility divided by the expected yearly energy cost savings, stated in years.

**(69) “Standard Practice”:** Conventional equipment or material applied in a way that it may be observed as a common or necessary feature of new and existing businesses.

(e) In new commercial construction it may include but is not limited to: electronic fluorescent ballasts; T-8 fluorescent lamps, compact fluorescent lamps that are not hard wired; parabolic louvered fluorescent fixtures; R-19 insulated walls in wood frame construction; variable air volume space conditioning systems; the portion of energy management controls that monitor for life safety, maintenance, or control process for purposes other than saving energy.

(f) In other energy facilities it may include but not be limited to propane powered lift trucks, electric golf carts or curbside recycling bins.

(g) Any other equipment, material, or applications of equipment or material as determined by the Director.

**(70) “Substantial Energy Savings”:** Means that the Department has determined that:

(a) A facility, other than a lighting retrofit or sustainable building facility and excluding Research Development & Demonstration, transportation, recycling market development, recycling facility, will save at least 10 percent of the energy used in a given facility;

(b) A lighting retrofit facility will reduce the affected lighting system energy use by at least 25 percent;

(c) The energy facility is a sustainable building practices facility as defined under “Sustainable Building Practices Facility” of this rule; or

(d) The facility measures are measures that would qualify under or are measures recommended in an energy audit completed under ORS 469.631 to 469.645, 469.649 to 469.659, and 469.673 to 469.683.

**(71) “Sustainable Building Practices Facility”:** Means a building facility as defined under “Commercial New Construction” of this rule and that:

(a) Is rated and certified LEED-NC™, LEED-CS™, or LEED-CI™ under the Leadership in Energy & Environmental Design (LEED™) Green Building Rating System managed by the U.S. Green Building Council or is rated and certified by a program approved by the Department that provides comparable performance on environmental measures and equivalent or better energy performance as documented by whole building energy modeling, is commissioned and is verified by an independent third party. In addition, a facility must:

(A) In achieving its LEED™ rating, the facility must earn at least two points under Energy & Atmosphere Credit 1 (Optimize Energy Performance).

(B) In achieving its LEED™ rating, the facility must earn at least one point under Energy & Atmosphere Credit 3 (Enhanced Commissioning).

- (c) Each LEED-NC™ or LEED-CS™ facility must calculate and report the building's annual solar income in Btu (not the site income). The calculation must account for the contribution from each face (orientation with surfaces exposed to direct sunlight) and must take into account any existing or reasonably expected shading (by other buildings or vegetation, e.g.) of these surfaces. Calculations may ignore such things as rooftop or wall-mounted mechanical facility components.
- (d) Facilities using on-site renewable energy production technologies such as photovoltaic or wind technologies may treat these elements as a separate renewable energy resource facility for tax credit purposes, provided that any points earned for such features in the LEED™ rating are not required to achieve the rating on which the Sustainable Building facility credit is to be based. In cases where subtracting such points would result in a lowering of the LEED™ rating (e.g. from Gold to Silver), the tax credit will be awarded on the basis of the lower rating. The rating point total, net of renewable generation credits, can never be less than that required for a Silver rating.

**(72) “Transportation District”:** A transportation district included in ORS 184.675(7).

**(73) “Transportation Facility”:** A facility that reduces energy used for traveling, including but not limited to traveling to and from work or school, work-related travel or travel to obtain medical or other services. A transportation facility must meet one or more of the following criteria:

- (a) Telework defined as working from home instead of commuting a longer distance to the principal place of employment. It does not include home-based businesses or extension of the workday. Telework equipment must be installed to reduce employee vehicle miles traveled a minimum of 45 working days per 12 consecutive months. Eligible costs include purchase and installation of new equipment at the telework site. Computer, facsimile device, modem, phone, printer, software, copier, and other equipment necessary to facilitate telework as determined by the Director are eligible costs. Eligible cost for telework facilities does not include replacement cost for equipment at the principal place of business when that equipment is relocated to the telework site; fees for maintenance and operation of any equipment; office furniture and office supplies or training costs.
- (b) Telework for the purpose of reducing business vehicle miles traveled must reduce employee business related travel by 25 percent.
- (c) Commuter pool vehicles transporting three or more riders dedicated to reducing vehicle miles traveled. The vehicle must be used a minimum of 150 working days per 12 consecutive months. Eligible cost includes the purchase or cost of the vehicle(s). If vehicles with special equipment are being purchased, a copy of the sales quotation showing the additional cost for the equipment must be submitted. The vehicle must remain in service for five years. Where vehicles are used for business travel other than transporting riders, eligible cost shall be reduced based on the estimated percent of miles dedicated to reducing travel. Transportation districts, mass transit districts, or metropolitan service districts within communities of 50,000 or more people are not eligible if they receive other federal or state funding for the purposes of offsetting the costs.

- (d) Transit passes used by an applicant's riders or in fareless zones to reduce vehicle miles traveled. Eligible cost includes the cost of the transit pass or the cost specified in the contract for providing the fareless zone. Transportation districts, mass transit districts, or metropolitan service districts within communities of 50,000 or more people are not eligible. Eligible cost also includes the cost of equipment used as a shelter for riders waiting for transit. To be eligible, the shelter must be part of a transit pass facility. Applicants must subtract any employee contributions for transit passes from eligible costs.
- (e) Bicycle used by an applicant's riders to reduce vehicle miles traveled a minimum of 45 work days per 12 consecutive months. Maximum eligible costs of \$800 include purchase of bicycles and equipment used to store bicycles. Accessory items, such as locks, panniers, rain gear helmets, etc. are not eligible, except for bicycle lights.
- (f) Fees paid by an applicant to a Transportation Management Association (TMA) or nonprofit organization that provides transportation services for the purpose of reducing vehicle miles traveled by a passenger. The fee must be part of a transportation facility and cannot exceed the cost of the transportation facility. To be eligible, the applicant must provide verification of an agreement with the transportation provider for specific services that reduce vehicle miles traveled.
- (g) The cost of an incentive program paid by the applicant that provides a financial incentive to a passenger for reducing vehicle miles a minimum of 45 work days per 12 consecutive months. To be eligible the applicant must provide a written incentive program plan for Energy Department approval.
- (h) Car sharing is defined as a program in which drivers pay to become members in order to have joint access to a fleet of cars. Eligible cost for car sharing includes the cost of operating a car sharing program, including the fair market value of parking spaces used to store the cars available for the car sharing program, but does not include the cost of the fleet of cars. It does not include operations conducted by a car rental agency.
- (i) Transportation Service is defined as a facility that provides transportation services to reduce vehicle miles driven by a single occupant vehicle. The eligible cost for a transportation service facility is the cost for providing the transportation service, but does not include the cost of the vehicle. The transportation service facility must provide service for a minimum of 150 days per 12 consecutive months. Transportation districts, mass transit districts, and metropolitan service districts in communities with 50,000 or more people are not eligible if they receive other federal or state funding for the purposes of offsetting the costs. Applicants must subtract any farebox contributions from eligible costs.
- (j) Individualized Travel Behavior Change is defined as a facility that is a program approved by the Oregon Department of Energy that reduces vehicle miles traveled through one-on-one contact with the participants in a specific geographical area or in a targeted group. Pre and post-facility surveys must be conducted. The applicant must submit a report with the results of these surveys to measure travel reduction. Eligible costs include capital expenditures,

administrative and communication costs. Facilities are subject to the VMR cost-effectiveness formula.

- (k) Vanpool Program is defined as a facility that is an employer-sponsored or organization sponsored program that provides transportation to registered members to commute on a regular basis. Eligible costs include vehicle operation costs, but do not include the cost of the vehicle. The applicant must conduct pre and post-facility surveys and submit a report with the results of these surveys to measure reduction in vehicle miles. The program must provide service for a minimum of 150 work days per 12 consecutive months. Facilities are subject to the VMR cost-effectiveness formula.
- (l) Transportation Services for K-12 Students is defined as a facility that is a program that provides transportation services for K-12 students during the school year. All entities, including transportation districts, mass transit districts, or metropolitan service districts within communities of greater than 50,000 people, are eligible.
  - (A) The tax credit amount shall be based on the cost per student and a reasonable estimate of the actual number of students served.
  - (B) Eligible agencies shall develop a monthly cost per student service, based on but not limited to lost revenues, added costs, and VMR cost-effectiveness to be approved by the Department.
  - (C) The applicant must conduct pre and post-facility surveys and submit a report with the results of these surveys to measure reduction in vehicle miles.
- (m) The purchase of efficient truck technology for trucks and related truck trailers, as defined in ORS 801.580, for commercial motor vehicles, as defined in ORS 801.208, that are registered under ORS 803.420, or for commercial motor vehicles that are proportionally registered under ORS 826.009 or 826.011. Eligible efficient truck technology, such as an auxiliary power unit (APU), must be recognized as a verified technology by the U.S. Environmental Protection Agency (USEPA) SmartWay Transport Partnership to potentially qualify.
  - (A) Eligible projects must meet the following requirements:
    - (i) Retrofit a truck with a qualifying APU; or
    - (ii) Add an APU and two or more USEPA Smartway efficiency measures to a newly-manufactured truck. A trailer with two or more Smartway efficiency measures may also be included with this project; and
    - (iii) Eligible vehicles must demonstrate Oregon registration with a current Cab Card as part of the Application for Preliminary Certification by:
      - (1) Commercial (Oregon-only registration operated solely in Oregon) with a red Oregon-only commercial “YC” plate from the Oregon Motor Carrier Transportation Division (MCTD); or

(2) International Registration Plan (IRP), also referred to as Apportioned registration, with a red Apportioned “YA” plate from the Oregon MCTD. For IRP vehicles, eligible facilities must meet the following requirements as part of the application for preliminary certification:

- (a) Provide the two most recent calendar year IRP billing notices that document the percentage of a vehicle’s annual mileage that was driven in Oregon.
- (b) For proposed eligible facilities that have no recent calendar year IRP billing notice documentation, provide a signed project owner statement indicating the anticipated percentage of miles that will be driven in Oregon over the next two years.

(B) Facilities that can document that 15 percent to 50 percent of the vehicles that meet the requirement in (A) of this subsection annual mileage occurs in Oregon are eligible to receive a tax credit of 25 percent of the facility’s eligible certified costs.

(C) Facilities that can document that more than 50 percent of the vehicle that meet the requirement in (A) of this subsection occurs in Oregon are eligible to receive a tax credit of 35 percent of the facility’s eligible certified costs.

(D) Proof that the applicant has a sufficient nexus with the state of Oregon. This includes a dedicated location in Oregon for maintenance, dispatch, and monitoring of facilities.

(E) The facility’s simple payback period must be between two and fifteen years of the time the tax credit is issued.

**(74) “Transportation Provider”:** is defined in ORS 469.185(16).

**(75) “Transportation Services Contract”:** is defined in ORS 469.185(17).

**(76) “Utility”:** Gas or electric utilities as defined below.

(a) An Investor Owned Utility (IOU) as defined in ORS 757.005, or its subsidiaries and affiliated interests as defined in ORS 757.015; or

(b) A Publicly Owned Utility (POU) and people's utility district as defined in ORS 261.010, or a municipal or cooperative utility.

**(77) “Vanpool Program”:** means a program that provides opportunities for a designated group of riders to share the usage of a vehicle to commute between different communities/neighborhoods on a regular basis.

**(78) “Vehicle Miles Reduced (VMR)”:** Reduction in miles achieved by a facility when compared to single occupant vehicles.

**(79) “Waste-to-Energy Facility”:** means an energy resource facility that recovers materials and energy from a waste stream under conditions listed below. The BETC program intends to encourage the responsible use of all resources including waste streams. Generally, recovery of a material will be preferred in comparison to recovery of energy. In order to respect the embedded energy of a material stream the following criteria have been established to define facilities that

do not meet the definition of a recycling facility, but provide environmentally responsible recovery from a waste stream. Therefore, equipment used to recover materials and energy from a waste stream is an eligible facility when all of the following conditions are met:

- (a) The value of the marketable materials and energy resources recovered from the waste stream, less the value of the external energy resources consumed in the recovery process is greater than the magnitude of the costs incurred or revenues derived in disposal of the waste stream in standard industry practice.
- (b) Recovered material/end product, exclusive of fuel or lubricant, exceeds 50 percent or higher on a dry mass basis.
- (c) The facility does not increase the release of toxins, fossil-derived greenhouse gas emissions, or other emissions.
- (d) The facility does not divert materials from a higher value use.
- (e) The facility has an acceptable energy balance as determined by the Director.

**(80) “Year”:** Calendar year.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469.185 - 469.225

Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 3-1986, f. & ef. 8-29-86; DOE 2-1988, f. & cert. ef. 3-17-88; DOE 3-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 3-1990, f. & cert. ef. 9-20-90; DOE 4-1991, f. & cert. ef. 12-31-91; DOE 2-1992(Temp), f. 12-14-92, cert. ef. 12-15-92; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 4-1998, f. 12-14-98, cert. ef. 12-15-98; DOE 2-1999, f. 12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04; DOE 3-2004, f. & cert. ef. 7-1-04; DOE 1-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 2-2006, f. 9-29-06, cert. ef. 10-1-06; DOE 3-2006, f. 11-27-06, cert. ef. 12-1-06; DOE 3-2008, f. & cert. ef. 3-21-08; DOE 4-2008, f. 6-19-08, cert. ef. 6-20-08

## **330-090-0120**

### **Preliminary Certificate Application Requirements for a Business Energy Tax Credit**

#### **(1) Eligible facilities**

- (a) The Department may issue only one BETC for each separate and distinct qualified energy facility under these rules. The following facilities, as further defined in these rules, are eligible for a Business Energy Tax Credit: An energy facility, recycling facility, rental dwelling weatherization facility, transportation facility, car sharing facility, sustainable building practices facility, alternative fuel vehicle or facilities necessary to operate alternative fuel vehicles, including but not limited to an alternative fuel vehicle refueling station, a high-efficiency combined heat and power facility, a high-performance home, a homebuilder-installed renewable energy system, a renewable energy resource equipment manufacturing facility or a research development & demonstration facility that complies with these rules.

#### **(2) Required information**

- (a) Persons requesting a Business Energy Tax Credit shall apply on the Department-approved form for a preliminary certificate. In addition to the information required in ORS 469.205, the applicant shall provide the following information:
  - (A) The name, address, and phone number of the applicant, owners of the facility, and the developers of the project.
  - (B) The applicant's federal tax identification number or social security number which may be shared with the Department of Revenue to facilitate the administration of the state tax law.
  - (C) Proposed facility construction and operational start and finish dates. A facility's start date is the date that the project applicant financially commits to the project. Financial commitment includes, but is not limited to: making a down-payment or deposit, signing a contract with a vendor, ordering material or equipment, beginning construction or installation.
  - (D) The proposed facility location within the geographical confines of Oregon or in the case of an alternate fuel vehicle demonstrated intent that the vehicle will be titled in the State of Oregon.
  - (E) Information demonstrating that the proposed facility will -comply with or have a variance from the land use laws of the city or county where the facility will be located;
  - (F) Information demonstrating that the proposed facility will comply with all other local, federal, and state laws, including but not limited to the following:
    - (i) A water power energy facility that uses navigable waters or that sells electricity must have a permit, license or exemption from the Oregon Department of Water Resources (DWR) and the Federal Energy Regulatory Commission (FERC). Proof of permits, licenses, or exemptions from DWR and the FERC must be submitted to the Department before a facility is eligible to receive final certification. Also, if the facility uses water from the Columbia River basin, it must comply with the Northwest Power and Conservation Council's Fish and Wildlife Program.
    - (ii) A geothermal energy facility must have the proper permit from the Oregon Department of Geology and Mineral Industries (DOGAMI) or a permit from DWR.
    - (iii) A biomass energy facility must have required permits from the Oregon Department of Environmental Quality (DEQ).
  - (G) A list of appropriate authorizations for all work performed including but not limited to appropriate licenses, permits, or other authorizations that are required by state or local jurisdiction for the facility.
  - (H) Information demonstrating the intended operation, maintenance and use of the facility, including but not limited to, where appropriate, the amount and type of jobs potentially created or eliminated in the construction, installation and operation of the facility in Oregon, the amount of projected energy saved, generated or transmitted and a demonstrated intent that the facility will be maintained and operated for at least five years after the facility is issued a final certification under these rules.

- (I) A declaration from the applicant that all property taxes for the facility have been paid and there are no delinquent property taxes associated with the facility.
  - (J) If the application is for a Renewable Energy Resource Equipment Manufacturing Facility, information that demonstrates that the facility will be used solely to manufacture equipment, machinery or other products that will be used exclusively for renewable energy resource facilities. An applicant shall provide sufficient information relating to the specific characteristics of the equipment, machinery or other products that demonstrate how such equipment, machinery or other products will be used exclusively for renewable energy resource facilities and not for other commercial purposes.
- (b) Criteria for a separate and distinct facility applying to receive a thirty-five percent non-renewable tax credit. If an applicant has other current applications, or has received a preliminary certification, or a final certification within twelve months of the application date, the applications will be considered a single facility for the purposes of these rules provided the proposed eligible costs do not exceed the annual limit set forth in ORS 469.200. If the applicant has submitted more than one application that exceeds the eligible costs, then the application will be considered a separate and distinct facility if the facility does not meet three or more of the following:
- (A) shared ownership of facilities,
  - (B) shared location of facilities,
  - (C) project permits issued to a shared entity or at the same time or
  - (D) a shared contract to complete the facilities.
- (c) Criteria for a separate and distinct facility applying to receive a fifty percent tax credit for facilities using or producing renewable energy, manufacturing facilities, or high efficiency combined heat and power facilities. If an applicant has other current applications, or has received a preliminary certification, or a final certification within twelve months of the application date, the applications will be considered a single facility for the purposes of these rules provided the proposed eligible costs do not exceed the annual limit set forth in ORS 469.200. For the purposes of determining whether a facility is separate and distinct, a facility shall be considered one if three or more of the following apply:
- (A) The facility is located on one or more adjacent parcels of land or parcels;
  - (B) The facility has been recognized as a single facility by a federal, state, county, city or local authority including, but not limited to siting council, state or local boards or commissions. The facility has obtained or made application for siting or land use approval and other applicable permits, licenses or site certificates as a single facility or on a single application;
  - (C) When the facility is designed to generate energy, the construction of the facility is performed under the same contract with a general contractor licensed under ORS 701 or multiple contracts entered into within one year of each other with one or more general

contractors licensed under ORS 701. If facilities will be completed in phases over time, the applicant must demonstrate that each of the phases of the facility would independently qualify as an eligible facility and that each phase of the facility are not interdependent in purpose or the manner in which they will be owned, financed, constructed, operated, or maintained or the facilities or phases of the facility will be considered as one facility for the purposes of these rules.

- (D) The facility owners have entered into or anticipate entering into agreements to share project expenses, personnel, capital investments including generating equipment or other resources related to the facility;
  - (E) The generating equipment for the facility and the related facility was purchased by the same person or persons who own or operate the facility or have taken action under any of the above factors;
  - (F) A facility is connected to the grid through a single connection or multiple connections when there is a shared net metering, power purchase or other applicable transmission agreement; or
  - (G) Other factors or considerations which demonstrate that the facility is not a separate and distinct facility based on its construction, operation, maintenance and output.
- (d) Anticipated capital expenditures and other costs as defined in these rules for the erection, construction, installation or acquisition of the proposed facility, its expected operational life, and its simple payback as defined in ORS Chapter 469 and these rules.
  - (e) Information demonstrating anticipated substantial energy savings or a description of products that will result from the facility and how those products will result in substantial energy savings.
  - (f) For a proposed renewable energy resource facility, proof the resource level is adequate for a feasible facility. Such proof includes data listed in (A) through (G). Other data may be used if the listed data cannot be obtained at a reasonable cost, such as for RD&D facilities.
- (A) For a solar energy facility: A sun chart and solar insolation data for the site. Facilities must have a Total Solar Resource Fraction of at Least 75%.
  - (B) For a wind energy facility:
    - (i) The average monthly wind speed for 12 consecutive months at the proposed site. Measure wind speed at or as close as practically feasible to the hub height of a horizontal axis wind machine; or, the equator of a vertical axis wind machine; or
    - (ii) Measure wind speed at two heights for 12 consecutive months, the lowest one at least 10 meters above ground and estimate the wind speed at hub or equator height; or

- (iii) In the event of less than one year's measurements at the proposed site, include the months of on-site measurements and supplement these data with estimated average monthly wind speeds at or near the proposed site to complete the 12 consecutive month data set. Such estimated data should be obtained from a nationally recognized firm that provides estimated wind resource data based on advanced national wind mapping technology; or
- (iv) The estimated average monthly wind speed for 12 consecutive months at or near the proposed site obtained from a nationally recognized firm that provides estimated wind resource data based on advanced national wind mapping technology.
- (v) In the event that estimated wind resource data are used as described under section (3) and (4) above, the project owner shall provide to the Department not later than 14 months after the start-up date, one year of actual monthly energy production data and, if available, actual monthly average wind speed data at wind energy facility's site.
- (vi) Proposed equipment must meet the following:
  - (1) Each proposed model of the system must demonstrate reliable operation of that model of equipment and show monthly data of average energy produced (kWh) and average wind speed for one consecutive year at a site with average annual wind speeds of at least 12 mph; or
  - (2) Proof that the proposed wind system model is listed on the official list of Qualified Wind Generators published by the Energy Trust of Oregon, the California Energy Commission, or the New York State Energy Research and Development Authority (NYSERDA) in effect on April 30, 2010; or
  - (3) The proposed manufacturer's power curve, the estimated annual energy production based on the site's wind speed data, and the manufacturer's performance guarantees (on-line availability and power curve).
- (vii) The Department reserves the right to deny eligibility for any wind system for any reason including, but not limited to: poor generator performance, concerns about wind generation system design or quality of data presented, lack of manufacturing support for maintenance, warranties, etc., and insufficient experience with generation.
- (C) For a geothermal energy facility (except a heat pump system): A plot of well temperature versus time at the design flow rate at steady state temperature.
- (D) For a water power facility: One year of real or predicted average monthly stream flows. If flows are predicted, describe how.
- (E) For a biomass energy facility: Data that show the resource is available in an amount that meets the facility's energy needs for a period of a minimum of five years.

- (F) For a waste heat recovery facility: A table showing how much waste heat is available and from what sources.
- (G) For wood-fired boilers or furnaces with heat output capacities of less than 2 million British Thermal Units per Hour: Certification that they produce particle emissions equal to or less than 2.5 grams per hour for catalytic stoves and 4.5 grams per hour for noncatalytic stoves by an independent wood stove laboratory currently certified by the United States Environmental Protection Agency (US EPA).
- (g) The payment required by OAR 330-090-0150(3).
- (h) For proposed alternative fuel vehicle facilities: proof that the proposed vehicle or conversion equipment is on DEQ's approved list in effect on December 1, 2007, the current exhaust emissions, the expected emission reductions, the expected annual energy and/or cost savings (if any).
- (i) For proposed alternative fuel vehicle facilities: the proposed number of vehicles to be converted or new vehicles purchased, the expected annual fuel savings, the type of alternative fuel used, and the expected annual amount of alternative fuel used.
- (j) For proposed alternative fuel fueling station facilities: a description of proposed fueling systems, the estimated number of alternative fuel vehicles that will use the proposed station, the type of alternative fuel that will be dispensed, and the expected annual amount that will be dispensed.
- (k) For proposed transportation facilities: required documentation for each category specified by OAR 330-090-0110 (70) (a through m).
- (l) For a proposed waste-to-energy renewable energy resource facility that meets the definition of waste stream includes the anticipated percentage of waste stream product to be recovered and a remediation plan for anticipated emissions and byproducts.
- (m) For a proposed renewable energy resource equipment manufacturing facility:
  - (A) The applicant shall demonstrate that they can meet ORS 469.197(4)(c) through (f) by:
    - (i) Describing the minimum level of direct employment that will be provided by the facility during each of the tax years in which the tax credit will be claimed and by describing the anticipated average annual direct employment during each of those years, including the number of average hourly and annual wages of employees by employment classifications by geographic location. The applicant must also describe actions it will take to achieve cultural diversity in its work force.
    - (ii) Demonstrating its financial ability to construct and operate the proposed facility through documentation such as independent credit ratings; credit references, including letters from banks or other financial institutions attesting to the applicant's

credit worthiness; and other documentation demonstrating the applicant's financial viability.

(iii) Demonstrating that the facility will achieve long-term success by documenting the qualifications, capabilities and experience of the applicant in the construction and operation of such facilities, the long-term commercial and technical viability of the renewable energy resources manufacturing equipment and the renewable energy resource facilities for which the equipment is produced.

(iv) Certifying that allowance of the tax credit is integral to the decision to expand or locate the facility in Oregon.

(v) Before the Director will approve a final certification for a renewable energy resource equipment manufacturing facility, the Department may require the applicant to enter into a performance agreement or other similar agreement for the facility. Failure to comply with the terms of the performance agreement or other similar agreement may be the basis for denial or revocation of the final certification pursuant to OAR 330-090-0133.

(B) Any other information necessary to find that a proposed facility complies with ORS 469.185 to 469.225 and these rules.

(C) In considering such applications, the Director may consult with other state agencies.

(D) The Director must find that:

(i) The applicant has demonstrated that it has a reasonable likelihood of achieving the minimum level of employment proposed and that such employment will contribute to public benefit, based on the number of average hourly and annual wages of employees including benefits by employment classifications by geographic location, and actions to achieve cultural diversity in its workforce.

(ii) The applicant has a reasonable likelihood of being financially viable based on its credit ratings and references from banks and financial institutions attesting to its credit worthiness.

(iii) The applicant has the organizational expertise as demonstrated by qualifications and experience to construct and operate the proposed facility.

(iv) The renewable energy resource equipment and the renewable energy resource facilities for which the equipment is produced have the commercial and technical viability to have a reasonable likelihood to achieve long-term success.

(v) The facility will contribute to a diversified portfolio of renewable energy resource equipment manufacturing facilities.

- (vi) The applicant has certified that allowance of the tax credit is integral to the decision to expand or locate in Oregon.

**(3) Standards When Reconstructing a Facility:** If a facility is reconstructed and a preliminary certification is filed for a tax credit on the reconstructed facility, the tax credit for the reconstructed facility may be reduced by the amount of the original tax credit remaining for the original facility.

**(4) Eligible Costs of a Renewable Energy Resource Equipment Manufacturing Facility:**

- (a) A BETC may be granted based on the eligible costs of a facility that is used to manufacture equipment, machinery or other products that will be used exclusively for renewable energy resource facilities.
- (b) Subject to the facility cost limitations of OAR 330-090-0150 (1)(a)(C) and the provisions of OAR 330-090-0120 (4), eligible costs for a renewable energy resource equipment manufacturing facility include any land purchase costs, structures, buildings, installations, excavations, machinery, equipment or devices, or any addition, reconstruction or improvements to land or existing structures, buildings, installations, excavations, machinery, equipment or devices, necessarily acquired, constructed or installed by a person in connection with the conduct of a trade or business, that is used to manufacture the equipment, machinery or other products that will be used exclusively for renewable energy resource facilities.
  - (A) Eligible costs do not include any costs of any land purchase costs, structures, buildings, installations, excavations, machinery, equipment or devices, or any addition, reconstruction or improvements to land or existing structures, buildings, installations, excavations, machinery, equipment or devices that have been subject in whole or in part to the facility cost limitation of OAR 330-090-0150 (1)(a)(A) if such costs would exceed that cost limitation.
  - (B) Eligible costs do not include costs of a facility that is used to manufacture equipment, machinery or other products not used exclusively for renewable energy resource facilities.
  - (C) An application for a renewable energy resource equipment manufacturing facility must demonstrate compliance with these provisions to be accepted, including clearly describing the specific characteristics of the equipment, machinery or other products that demonstrate why such equipment, machinery or other products will be used exclusively for renewable energy resource facilities and not for other commercial purposes and therefore why the costs of such of such equipment, machinery or other products are eligible costs.

**(5)** If the Department determines that the applicant qualifies for a BETC, the Department may issue a preliminary certification. The preliminary certification may contain specific criteria and conditions for the facility to meet in order to obtain a final certification based on the information provided in the application for the BETC and type of facility that is described in the application.

In addition, the Department may require the applicant to enter a performance agreement or other similar agreement as a condition of approval.

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469.185 - 469.225

Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 4-1991, f. & cert. ef. 12-3-91; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 4-1998, f. 12-14-98, cert. ef. 12-15-98; DOE 2-1999, f. 12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04; DOE 3-2004, f. & cert. ef. 7-1-04; DOE 1-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 3-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 3-2008, f. & cert. ef. 3-21-08; DOE 4-2008, f. 6-19-08, cert. ef. 6-20-08

### **330-090-0130**

#### **How the Oregon Department of Energy Processes a BETC Application**

##### **(1) General:**

- (a) The Director reviews a BETC application in two stages. The first stage is called preliminary certification. The second stage is called final certification. The final certification consists of the determination of eligible costs for purposes of the tax credit and the issuance of the BETC final certificate.
- (b) To begin the review process for each stage, or to change the facility during the review process, an applicant must submit an application on the form approved by the Department.
- (c) A facility owner planning to use a Pass-through Partner will select the pass-through option on the Application for Preliminary Certification.
- (d) The Director may impose conditions in approving a preliminary or final certification that the facility must operate in accordance with the representations made by the applicant, and is in accordance with the provisions of ORS 469.185 to 469.225 and any applicable rules or standards adopted by the Director.
- (e) If the Department determines that the applicant qualifies for a BETC, the Department may issue a preliminary certification. The preliminary certification may contain specific criteria and conditions for the facility to meet in order to obtain a final certification based on the information provided in the application for the BETC and type of facility that is described in the application. In addition, the Department may require the applicant to enter a performance agreement or other similar agreement as a condition of approval.

**(2) Approval of Preliminary Certifications:** The Director has approved preliminary certifications for the following facilities that the Department has reviewed and determined to be otherwise qualified under these rules:

- (a) Alternate energy devices qualifying for a tax credit under the Residential Energy Tax Credit Program, OAR 330-070-0010 through 330-070-0097, for which the Department has determined qualified costs, energy savings, and eligible tax credits. A facility owner may file

for a preliminary certification to present documentation supporting different determinations for review and approval.

(b) Pre-qualified hybrid-electric vehicles.

**(3) Preliminary Certification Review Process:** Except as provided in OAR 330-090-0130(2), a completed application for preliminary certification shall be received by the Department on or prior to the erection, construction, installation or acquisition of a facility.

(a) Within 60 days after an application for preliminary certification is filed, the Director will decide if it is complete. An application is incomplete if it does not include information needed to demonstrate substantive compliance with the provisions of ORS 469.185 to 469.225 and any applicable rules or standards adopted by the Director. The Director will provide the applicant a written notice relating to the incomplete application and the information needed to make the application complete. If no action is taken within 30 days by the applicant, the application will expire.

(b) Within 120 days after a completed application is submitted the Director will notify the applicant of the status of the application, except as otherwise provided in subsection (5), if the applicant has not been notified otherwise the application has been denied.

(A) If it complies, the Director will approve the preliminary certification. The preliminary certification will state the amount of the costs that are eligible (eligible costs) for a BETC tax credit. It may differ from the amount requested for reasons explained in the preliminary certification and based on these rules. Also, it will state any conditions that must be met before development, final certification, or some other event can occur. The Director will explain why each condition is needed to comply with these rules.

(B) If it does not comply, the Director will deny the application. No later than 60 days after the Director issues an order denying the application, the applicant may request reconsideration as provided in OAR 330-090-0133(4).

(C) An applicant can re-submit an application that is denied if features of the facility change, the applicant provides data the absence of which resulted in the denial, or other changes warrant. An application for preliminary certification can be amended or withdrawn by the applicant before the Director issues a final certification. If an application is amended, the time within which review occurs starts over. An applicant may request reconsideration of an application denial under this rule.

**(4) Renewable Energy Resource Equipment Manufacturing Facility:** If under the provisions of ORS 469.200(2), the Director intends to certify less than the total or no amount of eligible costs of a renewable energy resource equipment manufacturing facility, the Director will notify the applicant in writing of that intent before approving the preliminary certification. The applicant will have 30 calendar days from the date notification was issued to inform the Director in writing whether it wishes to withdraw the application or suspend further consideration of the application until a future date specified or submit additional information in support of the application. If the Director has not received notification or additional information in support of the application within that period of time, the Director may certify less than the total or no amount of eligible costs of the renewable energy resource equipment manufacturing facility. Once eligible costs are certified and a preliminary certification is issued under this section, the

certified eligible costs may be revised if conditions under ORS 469.200(2) change or upon notification from the applicant or other information indicating that the scope of the project or the energy facility has changed in such a way to impact the preliminary certificate.

**(5) Preliminary Certification After Start of a Facility:**

- (a) If a facility has been started an applicant may file a written request with the Director for approval of a preliminary certification after facility start. Such a request must contain information in accord with OAR 330-090-0120 and OAR 330-090-0130(5)(b).
- (b) The Director may approve preliminary certification after facility start if:
  - (A) The request is in accord with OAR 330-090-0120;
  - (B) Special circumstances make application for preliminary certification before facility start up impracticable. Such circumstances include process delays beyond the applicant's control, facility funding and energy supplies or markets; and
  - (C) The Director receives the waiver request within 90 days of facility start date. Under extraordinary circumstances the Director may extend the waiver period provided the facility serves the aims of the program.
  - (D) Failing to submit an application for preliminary certification before signing contracts for the facility does not constitute special circumstances supporting a waiver.

**(6) How Preliminary Certification Can be Revoked:** The Director may revoke a preliminary certification for a reason listed in subsection (a) through (c) of this section

- (a) A facility, other than a renewable energy resource equipment manufacturing facility, is not started before 1,095 days (3 years) after either the application for preliminary certification was received or an amendment of the preliminary certification was approved. A renewable energy equipment manufacturing facility is not started before 1,825 days (5 years) after either the application for preliminary certification was received or an amendment of the preliminary certification was approved.
- (b) Permits, waivers, and licenses required by OAR 330-090-0120 are not filed with the Department before facility development starts.
- (c) The facility undergoes changes without the changes being approved under OAR 330-090-0130(7).

**(7) Amendments to Preliminary Certifications:** To change a facility that has a preliminary certification and amend the preliminary certification, the applicant must file a written request with the Director prior to the project completion date.

- (a) The request must describe the change to the facility and reasons for the change. It may include changes in cost, tax credit amount, facility design, and materials. The change may also include changes in the amount of energy saved or produced, jobs created, project financing, the applicant, or other matters that demonstrate substantial change in the project's scope.
- (b) Within 60 days after the applicant files the change request, the Director will decide if the facility as modified complies with these rules..

- (A) If it complies, the Director may issue an amended preliminary certification which may contain new or amended criteria, conditions and requirements.
- (B) If it does not comply, the Director will issue an order that denies the change and provide written reasons for the denial.

**(8) If the facility does not proceed:** The applicant must inform the Director in writing if it does not proceed with the facility or proceeds without the tax credit. In that case, the Director will cancel the preliminary certification.

**(9) Pass-through Option Process and Application:**

- (a) In addition to the application for preliminary certification, an applicant who plans to transfer the tax credit certificate to a Pass-through Partner must complete and file the Pass-through Option Application form supplied by the Department.
- (b) If the Pass-through Partner is not yet secured at the time of the Application for Preliminary Certification, the facility owner will complete that section of the application by inserting "Partner to be identified" and will submit an updated application when the Pass-through Partner is secured.
- (c) The Department will not transfer and issue a final certificate to a pass-through partner until the facility owner provides evidence to the Department that the owner has received the pass-through payment in full.

**(10) Final Certification Review Process and Application:** An application for final certification must be filed after the facility is completed as defined in these rules.

- (a) An application for final certification must include:

- (A) Evidence to demonstrate that:

- (i) The facility complies with all conditions and criteria of the preliminary certification and with the provisions of ORS Chapter 469 and the rules adopted thereunder; and
- (ii) The facility remains in compliance with local, state, and federal laws, including local land use laws and with any conditions imposed by the local government as a condition of land use approval.

- (B) An account of the facility costs, including prorated costs.

- (i) If facility costs are less than \$50,000, the account may be records of facility costs paid or incurred based on canceled checks, invoices, receipts, a binding contract or agreement, or other documentation as may be required by OAR 330-090-0110(18) unless required by the Director to supply verification from a certified public accountant, who is not otherwise permanently employed by the facility owner or pass-through partner. If an applicant has an outstanding binding contract or loan agreement, the account shall demonstrate that payments on contract or loan are not in default; or
- (ii) If the facility costs are \$50,000 or more, a certified public accountant, who is not otherwise permanently employed by the facility owner or pass-through partner, must complete a written review and summary of costs paid or incurred based on canceled checks, invoices, or receipts, a binding contract or agreement, or other documentation

as may be required by OAR 330-090-0110(18). If an applicant has an outstanding binding contract or loan agreement, the certified public accountant shall include sufficient information to demonstrate that accounts directly related to the facility are not in default; or

- (C) For a Sustainable Building Practices Facility, a copy of the facility U.S. Green Building Council (USGBC) Rating Certificate, USGBC Final LEED™ Review, Energy Performance Documentation, Narrative for Energy and Atmosphere Credit 1, Annual Solar Income as described in the rules and method of calculation will be accepted in lieu of facility cost receipts.
- (D) Proof the facility is completed and operating.
- (E) If the facility is leased, a copy of the lease.
- (F) For Alternative Fuel Vehicle facilities, proof of conversion must include a copy of vehicle emission test performance results from DEQ or a conversion shop.
- (G) Documentation that the applicant and facility owner or owners are current on their property taxes where the facility is located if appropriate; and
- (H) Other data the Director finds are needed to assure a facility complies with these rules and conditions imposed in the preliminary certificate
- (I) The names of the person or persons who are to be issued the final certificate. If the final certificate is to be issued to a pass-through partner, the Department will not issue the certificate until the appropriate criteria, conditions and requirements of the preliminary and final certification and these rules are satisfied.

### **330-090-0133**

#### **(1) Processing the Final Certification**

- (a) Within 30 days after a final certification application is filed, the Director will determine whether the application is complete. An application is incomplete if it does not include information needed to demonstrate substantive compliance with the provisions of ORS 469.185 to 469.225 and any applicable rules or standards and preliminary certification conditions adopted by the Director. If it is not complete, the applicant will be provided a written explanation describing deficiencies. If it is complete, the Director will process the application. Within 60 days after a completed final certification application is filed the director will either approve or deny the final certification.
- (b) If the Director approves the application, the Director will issue final certification or issue a final authorization letter, which will state the amount of eligible costs and the amount of the tax credit approved. The final certification may contain additional criteria and conditions that must be met in order to retain tax credit benefits or the tax credit may be subject to revocation. If the facility fails to meet any of the criteria, conditions and requirements established in the final certification, the facility owner must notify the Department within 30 days.

#### **(2) Basis for Revoking Tax Credit Benefits**

- (a) If the Director does not approve the application, the Director will provide written notice of the action, including a statement of the findings and reasons for the denial by regular and certified mail.
- (b) A final certification application that is denied can be submitted again. A final certification application can be amended or withdrawn by the applicant. If an application is submitted again or amended, the time within which final certification review occurs starts over.
- (c) If the Director does not issue a final certification within 60 days after an application is filed, the application is denied pursuant to ORS 469.215(4).
- (d) The Director may deny a preliminary or final certificate if:
  - (A) The applicant does not provide information about the facility in a reasonable time after the Director requests it;
  - (B) The facility is significantly different than the proposed facility for which the preliminary certification was issued;
  - (C) The applicant misrepresents or fails to construct or operate the facility;
  - (D) The applicant fails to demonstrate that the facility described in the application is separate and distinct from previous or current applications reviewed by the Department;
  - (E) The facility does not meet all of the conditions and requirements contained in the preliminary certificate; or
  - (F) The applicant is unable to demonstrate that the facility complies with all applicable provisions of ORS Chapter 469 and the rules adopted thereunder.
- (e) The Director may revoke certificates as provided in ORS 469.225 and ORS 315.354 (5). For the purposes of this section, “fraud or misrepresentation” means any misrepresentation made by an applicant for a preliminary or final certification, including but not limited to, misrepresentations as to the applicant’s financial viability, facility construction and operation, or any other information provided as part of an application for a preliminary or final certification.
- (f) After the Director issues a final certificate, an applicant must notify the director in writing of any of the following conditions:
  - (A) The facility has been moved;
  - (B) Title to the facility has been conveyed;
  - (C) The facility is subject to or part of a bankruptcy proceeding; ~~or~~
  - (D) The facility is not operating; or
  - (E) The term of a leased facility has ended.
- (g) Pursuant to ORS 469.225, upon receiving information that a BETC certification was obtained by fraud or misrepresentation, or that the facility has not been constructed or operated in compliance with the requirements in the certificate, the Director shall revoke the certificate for the facility.
- (h) A revocation of the final certification or portion of a certification due to fraud or misrepresentation results in the loss of all prior and future tax credits in connection with that

facility. A certificate or portion of a certificate that has been transferred pursuant to ORS 469.206 will not be revoked.

- (i) For a facility other than a renewable energy resource equipment manufacturing facility, the revocation of a certificate due to failure to construct or operate the facility in compliance with the certificate results in the loss of any tax credits not yet claimed by the facility owner. A certificate or portion of a certificate that has been transferred pursuant to ORS 469.206 will not be revoked.
- (j) For a renewable energy resource equipment manufacturing facility, revocation of the certificate due to misrepresentation, fraud or failure to construct or operate the facility in compliance with the certificate results in the loss of all prior and future tax credits. If all or a part of the tax credit certificate has been transferred to a Pass-through partner under ORS 469.206, the certificate is not considered revoked, but the facility owner is liable for the amount of tax credits claimed or that could be claimed.

**(3) Sale or Disposition of the Facility After Final Certification:**

- (a) Pursuant to ORS 315.354(5), upon receiving notice that the facility has been sold or otherwise transferred, the Director will revoke the final certificate, as provided in OAR 330-090-0110 (29) as of the date of the disposition of the facility, unless the BETC for the facility has already been transferred under ORS 468.206.
- (b) The new owner or new or renewed lessee of a facility may apply for a final certificate. The request must comply with OAR 330-090-0130(9) and include information to allow the Director to determine the amount of tax credit not claimed by the former owner or former lessor or lessors. If the facility continues to comply with the requirements set out in these rules and any applicable conditions imposed by the Director, the Director will issue a new final certification consistent with the provisions of ORS 315.354 (5).

**(4) Request for Reconsideration:** No later than 60 days after the Director issues an order on a preliminary certification or an amendment to a preliminary certification under OAR 330-090-0130(3) and (6), final certification under OAR 330-090-0133, or canceling or revoking a final certificate under section OAR 330-090-0133(7), the applicant or certificate holder may request reconsideration in writing.

**(5) Inspections:** After an application is filed under ORS 469.205 or ORS 469.215 or a tax credit is claimed under these rules, the Department may inspect the facility. The Department will schedule the inspection during normal working hours, following reasonable notice to the facility operator.

**330-090-0135**

**Business Energy Tax Credit Sustainable Building Practices Facility Rules**

**(1)** To be eligible for a tax credit, Sustainable Building Practices Facilities must achieve a minimum rating of "Silver" using the LEED-NC, LEED-CS, or LEED-CI path of the U.S. Green Building Council's rating systems, listed in the rules, in effect as of the facility registration date. Facilities receiving a "Gold" or "Platinum" rating will be awarded proportionally larger tax

credits, as calculated by the Department. Sustainable Building Practices Facilities must also comply with all applicable rules.

(2) All Sustainable Building Practices Facilities must acquire a preliminary certification from the Department in accordance with OAR 330-090-0130(3). For these facilities, the facility owner must submit a certified copy of the Facility Registration Certificate issued by the U.S. Green Building Council, before the completion of Design Development. If an owner elects not to continue the LEED™ rating program to completion and the issuance of a rating certificate, the owner must, within 30 days, so notify the Department in writing, and provide a statement of intent to apply for a tax credit as an energy facility, if desired. Within 60 days of the statement of such intent, the owner must submit a preliminary certification application in accordance with OAR 330-090-0130(3).

(3) The Department may, at its discretion, convert a preliminary certification for an Energy Facility to a preliminary certification as a Sustainable Building Practices Facility, or accept a statement of intent to register as a Sustainable Building Practices Facility, provided that a certified copy of the U.S. Green Building Council facility registration certificate is provided to the Department within 30 days of the new preliminary certification date.

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469.185 - 469.225

Hist.: DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04; DOE 3-2004, f. & cert. ef. 7-1-04; DOE 3-2007, f. 11-30-07, cert. ef. 12-1-07

### **330-090-0150**

#### **Budget Limits and Payments for BETC**

##### **(1) Amount of Credits Allowed for a Facility:**

- (a) During any calendar year, a BETC preliminary certification will not be issued for more than:
  - (A) \$20 million in maximum eligible facility costs for a renewable energy resource facility or high efficiency combined heat and power facility;
  - (B) \$10 million in maximum eligible facility costs for any other facility, not including homebuilder-installed renewable energy facility and high performance home Business Energy Tax Credits subject to subsection (b).
  - (C) \$40 million in maximum eligible facility costs for a renewable energy resource equipment manufacturing facility.
- (b) A final certification for a Business Energy Tax Credit will not be issued for more than 50 percent of the cost not to exceed \$9,000 for a homebuilder-installed renewable energy facility or \$12,000 if the facility also constitutes a high performance home.

(2) **Return of Review Charge for Returned Incomplete Applications:** If under OAR 330-090-0130, the Department does not accept and returns an incomplete application for preliminary certification, the Department will also return the review charge submitted by the applicant.

(3) **Cost of Reviews:** ORS 469.217 requires applicants to pay all costs for the review of their applications. In order to meet this statutory requirement the Department has established the following schedule for payments to accompany an application.

- (a) Included with each application for preliminary certification must be a payment payable to the Department, except for facilities qualifying under OAR 330-090-0130(2), for which a charge must be paid with the application for final certification. For all facilities except Sustainable Building Facilities, renewable energy resource equipment manufacturing facilities, or facilities qualifying under OAR 330-090-0130(2), the payment will be 0.0060 multiplied by the facility eligible cost requested in the preliminary certification application, or a request to amend a preliminary certification, or \$30 whichever is greater. The maximum payment amount is \$35,000. The 0.0060 payment rate up to \$35,000 will be applied to all facilities with eligible costs of \$1 million and more that were received on or after January 1, 2007. For facilities with eligible costs of less than \$1 million, the 0.0060 payment rate up to \$35,000 will be applied to applications received on or after December 1, 2007. For renewable energy resource equipment manufacturing facility applications received on or after January 1, 2007, but before the effective date of these rules, the payment will be 0.0060 multiplied by the facility eligible costs requested in the preliminary certification application, or a request to amend the preliminary certification, not to exceed a payment amount of \$35,000. For renewable energy resource equipment manufacturing facility applications received on or after the effective date of these rules, the payment will be 0.0060 multiplied by the facility eligible cost requested in the preliminary certification application, or a request to amend a preliminary certification, not to exceed a payment amount of \$75,000. For Sustainable Building Facilities, the payment will be 0.0035 multiplied by the eligible cost calculated as required under these rules and as reported in the preliminary certification application, or a request to amend a preliminary certification. For facilities that qualify under OAR 330-090-0130(2), the payment will be 0.0035 multiplied by the eligible cost as requested in the final certification application.
- (b) A refund of up to 75 percent of this payment may be granted up to 730 days (2 years) from the date the preliminary certification was approved by the Department. Under no circumstances will an amount over 75 percent be refunded. Conditions for which a refund may be granted are:
- (A) Denial of a application for preliminary certification or for facilities that qualify under OAR 330-090-0130(2) of final certification; or
  - (B) Denial of a portion of costs requested in an application for preliminary certification or for facilities that qualify under OAR 330-090-0130(2) of final certification; or,
  - (C) A request to amend a preliminary certification resulting in decreased eligible costs. A refund will not be granted for any costs that are included in a pending certification.
- (c) If a request to amend a preliminary certification results in facility re-certification with increased eligible cost then additional application payments will be paid for the additional cost as specified in (2)(a) of this rule.
- (d) No facilities will be exempt from these requirements including applications for BETC pass-through under OAR 330-090-0140.
- (e) The payment is a required part of a completed preliminary certification application per OAR 330-090-0130, except for facilities that qualify under OAR 330-090-0130(2). Preliminary certifications will only be issued if the application is complete. In addition, the applicant may be required to pay for costs incurred in connection with the application that exceed these payments

and which the Director of the Department determines are incurred solely in connection with processing the application. The applicant will be advised of any additional costs the applicant must pay before the costs are incurred.

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469.185 - 469.225

Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 3-1986, f. & ef. 8-29-86; DOE 3-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 4-1991, f. & cert. ef. 12-31-91; DOE 2-1992(Temp), f. 12-14-92, cert. ef. 12-15-92; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 4-1998, f. 12-14-98, cert. ef. 12-15-98; DOE 2-1999, f. 12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04; DOE 3-2004, f. & cert. ef. 7-1-04; DOE 3-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 3-2008, f. & cert. ef. 3-21-08; DOE 4-2008, f. 6-19-08, cert. ef. 6-20-08